

THE U.N. COMMISSION ON HUMAN RIGHTS:
PROTECTOR OR ACCOMPLICE?

HEARING AND BRIEFING
BEFORE THE
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN
RIGHTS AND INTERNATIONAL OPERATIONS
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HEARING: THE U.N. COMMISSION ON HUMAN RIGHTS: PROTECTOR OR ACCOMPLICE?

TUESDAY, APRIL 19, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND
INTERNATIONAL OPERATIONS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:06 p.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee will come to order and good afternoon everybody.

I am pleased to convene this hearing of the Subcommittee on Africa, Global Human Rights and International Operations. Today we will be examining the important, highly relevant topic of reform of the United Nations' human rights institutions.

The promotion and protection of human rights has been a core task of the United Nations since its founding in 1945. The U.N. Charter created the Economic and Social Council, or ECOSOC, and its subsidiary body, the Commission on Human Rights, and tasked them to make studies and recommendations on social issues, including "the respect for, and observance of, human rights and fundamental freedoms for all."

One of the first tasks of the U.N. Commission on Human Rights was the drafting of the Universal Declaration of Human Rights, generally recognized as the most authoritative global definition of international human rights, and the foundation for the development and codification of several binding U.N. international human rights treaties.

The Preamble of the Universal Declaration stated that, and I quote:

"The peoples of the United Nations have in the Charter reaffirmed their faith in the fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women . . ." and that "Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."

Fifty-seven years later, it is appropriate and necessary to examine whether the institutions of the United Nations and their functioning are fulfilling not only the goals and founding ideals of the

world body, but contributing to the compliance of member states with their international legal obligations in this arena.

The Commission on Human Rights has come under increasing criticism in recent years from numerous quarters. A U.N. High-level Panel in December 2004 concluded that the UNCHR's credibility and professionalism had been undermined, due to the active undermining of the work of the Commission by members with poor human rights records. Last month, U.N. Secretary-General Kofi Annan told the Commission that, "Unless we re-make our human rights machinery, we may be unable to renew public confidence in the United Nations itself."

Indeed, last month I was in Geneva at the Human Rights Commission and witnessed the spectacle myself. There was no resolution on Zimbabwe, called an "outpost of tyranny" by Secretary Condoleezza Rice. There was no resolution on Turkmenistan, the most repressive of the 55 countries of the OSCE and whose government bulldozes mosques, tortures Christians, and closes rural hospitals. And there was no resolution on China, a country whose coercive population policies, whose repression of religious freedom, and the on-going political repression, have impacted every family in the country.

Resolutions against Belarus and Cuba were thankfully approved last week, but only after a full-court lobbying press by the United States delegation, which included personal pleas from President Bush to the Presidents of Ukraine and Mexico. The American Bar Association task force on the reform of the CHR notes, and I quote them:

"Only the most politically isolated states are subject to censure by the Commission, resulting in near immunity for Middle Eastern and African States, as well as Russia and China."

Even the U.N. High Commissioner for Human Rights, Louise Arbour, told me that she believes the atmosphere in the UNCHR is "surreal," and that there is "no intellectual engagement or serious consideration of the issues." The current model is ill-suited to its tasks, she noted, in which the Commission is both the adjudicator and implementer of human rights. She concluded, and I quote her again, "The process needs to re-invent itself."

Today, one of our witnesses is Bob Fu, President of the China Aid Association. Mr. Fu was physically expelled from the Commission earlier this month, when Chinese delegates objected that they felt "threatened" by the electric shock device Mr. Fu was showing to demonstrate how China tortures its prisoners. Mr. Fu's U.N. credentials were taken away before an investigation of the incident had even been undertaken. Mr. Fu, we thank you for being here today—for your willingness and that of Women's Voice International, who sponsored you in Geneva—to continue to speak out about the abuses of the Chinese Laogai.

I just want to note parenthetically, also joining us today is the great Harry Wu. Harry Wu is perhaps one of the greatest human rights champions in the world who spent decades of his life in the Laogai and several years ago—I will never forget him sitting where Mr. Lagon is sitting—actually brought in six members, survivors of the Laogai, including Palden Gatsu and Katherine Ho and others,

women and men, who had been abused and tortured in Chinese Laogai. And Harry, of course, led off that witness list and gave riveting testimony about what those abuses were all about.

But it is not just the Commission on Human Rights that is broken, I say to my colleagues. Other U.N. bodies have also strayed from their core mandates and failed to act on severe human rights violations. For example, the so-called “right” to abortion today is promoted, while the obligation to protect the life of the unborn child, amazingly, is ignored.

At a time when we know more about the magnificent world of an unborn child and increasingly treat that child as a patient who could be treated with microsurgery and all kinds of health interventions prior to birth, these kids are being excluded summarily and considered to be expendable if they are unwanted. I do believe the most fundamental of all human rights is the right to life of all and that birth is an event that happens to all of us; it is the beginning of a life.

That was the case most recently, when the U.N. Human Rights Committee, during its consideration of Kenya’s second periodic report on compliance with the International Covenant on Civil and Political Rights in March, tried to bully Kenya to legalize abortion, amazingly. In Poland in November 2004, the High Commissioner for Human Rights adopted among its concluding observations that the state party—that is to say Poland—should liberalize its legislation and practice on abortion. Peru sadly received similar treatment in June 2004 from the U.N. special rapporteur.

It is the ultimate oxymoron, I would suggest and submit, that abortion be construed to be a fundamental human right. Abortion is violence against children, and chemical poisoning and dismemberment of a fragile body of an unborn child can never be construed to be compassionate, sane or a benign act. It is an act of violence and a human rights abuse, and it also exploits women.

I would also add, finally, that on that case, Dr. Yolanda King, the niece of Dr. Martin Luther King, who used to be very strongly pro-choice, had an abortion and now has become very active in the pro-life movement. And she makes the point that civil rights and the civil rights movements in this country and anywhere in the world is severely compromised when whole groups of individuals, baby boys and baby girls, are excluded from protection in the law.

The purpose of this hearing today is to examine how and why the U.N. is no longer protecting and promoting the core human rights enshrined in the U.N. Charter and Universal Declaration. It is also to analyze the reform proposals that gladly, I am happy to say, have been put on the table.

Several of the reform proposals put forward have merit, and bear further consideration as the Congress proceeds in the development of legislation on the United Nations. To name a few, the practice of blind voting in ECOSOC needs to be scrapped, which has led to the election to the Commission of countries like Cuba, Sudan, Zimbabwe and the People’s Republic of China. Countries under UNSC sanction should not be given leadership positions on human rights issues. That should be a no-brainer. The role of NGOs, which are the fearless eyes and ears in so many places around the world, needs to be strengthened. The activities of the High Commissioner

for Human Rights should be better targeted and focused on training and reporting in the field. Finally, the Democracy Caucus needs to be bolstered as a counterweight to other alliances of non-democratic states.

We have two outstanding panels today, which will present views from the State Department and from NGOs, which have been diligently studying this issue. Before proceeding to panel two, we will recess for a briefing from U.N. Assistant Secretary-General for Political Affairs, Danilo Turk, on the Secretary-General's plan for reform in the human rights arena.

In conclusion, I look forward to hearing the views of all of our witnesses. As we proceed, let us keep in mind that human rights cannot be abridged on account of race, color, creed, gender, age or condition of dependency. Inclusiveness means everyone, and perhaps especially the inconvenient—the unborn child or the dissident or the believer in another religious tradition. The right to life, religion, speech, assembly and due process are indeed the pillars of a free and compassionate society.

I would like to yield to my good friend and colleague, Don Payne, for any opening comments he might have.

Mr. PAYNE. Thank you very much, Mr. Chairman, for calling this very important hearing and I would like to indicate that I believe that we do have an organization which needs reform.

However, let me say as I have said many times publicly and privately, the United Nations is an absolutely critical organization in today's world and it requires and deserves all the support of its 191 member states, as much support as they can give.

As we all know, the term "United Nations" was first coined by President Franklin Delano Roosevelt during World War II, in January 1942. The U.S. has a special history with the U.N. and a special responsibility as one of its founders and as the wealthiest and most powerful Nation in the world.

The purpose behind the U.N. was to establish a set of principles and systems through which the world's nations would come together to maintain peace and security. Therefore, the U.N. can only work with the full participation and support of its member states. We live in an ever changing world, whose daily problems challenges the U.N.'s systems to change with it.

As Toffler said in *Future Shock*, that any institution or agency that changes internally is not commensurate with changes externally, then that organization or agency becomes obsolete. It is important that we have change, because the only thing constant about the world is that there are changes, even when the Tribalter may crumble.

That being said, I commend Secretary-General Kofi Annan for his leadership and composure to meet these challenges, especially in these trying times.

Many people, particularly in this Congress, have criticized the Secretary-General for problems within the U.N., but again we must understand that the U.N. only works as well as its member states cooperate and works collectively to address problems it faces.

Additionally, Secretary-General Annan has announced bold plans for reform of the U.N. Most recent of these reforms proposed is that the human rights system, particularly the Human Rights Commis-

sion, be changed, as we have already heard about its inherent weaknesses and once again highlighting that if agencies and organizations don't change internally, then some of their results are obsolete.

The U.S. has been closely involved in the Commission since its establishment in 1946. The first year Eleanor Roosevelt helped draft the Universal Declaration of Human Rights in 1948.

Among the many achievements of the Universal Declaration is, by investigating individual complaints of human rights abuses, the U.N. Human Rights Commission (UNCHR) has focused world attention on cases of torture, disappearance and arbitrary detentions that has generated international pressure to be brought on governments to improve their human rights records. More could be done, but much has been done.

In the last few years, however, there has been serious concerns raised about members of UNCHR. In 2001, the United States was not elected to the UNCHR, while Sudan, Pakistan and other human rights violators were.

As a person who has followed the situation in Sudan for years—the first north/south conflict and now the Darfur genocide—I was particularly offended when Sudan was elected. The Government has shown its capacity for brutality and its bloodlust for its own people, particularly when these people, the ones who are currently being attacked after we had the north/south Islamic Government attacking the animist and Christians, now we have the non-Arab Black Sudanese being attacked.

For years it bombed and terrorized its people in southern Sudan and, as I indicated, now is doing the same thing in the west in Darfur, with the help of the Janjaweed which it has organized and has encouraged to burn, to rape, to kill, to steal, to murder.

It is important to note that United Nations did not vote Sudan on and the United States off the UNCHR. The members of the Commission are elected by member states of the Economic and Social Council for 3 years, with 15 members from Africa, 12 members from Asia, 5 from Eastern Europe, 11 from Latin America and the Caribbean and 10 from Western Europe and other nations, including the United States, for a total of 53 members.

We must not condemn the U.N. for these things that are being done by independent countries of which it is consisted. Again, I commend Kofi Annan for his reform plan in the three central pillars of the U.N. human rights systems, the strengthening and streamlining of the seven treaty bodies to strengthen the Office of the High Commission and to replace the 53-member Human Rights Commission with a smaller Human Rights Council, whose members would be elected by two-thirds majority of the General Assembly and its core will have peer review functions.

I am pleased that the U.N. has sent Assistant Secretary-General Danilo Turk of the Department of Political Affairs. I thank him for coming to brief us on the changes in the human rights system

Per rules, he will be unable to formally testify as we know, because the U.N. does not testify, but we do thank Secretary-General Kofi Annan for agreeing to allow this representative to brief the Congress.

As I conclude, I think that we as a Nation need to do more as relates to the U.N. We began by supporting 50 percent of the cost of the United Nations at its inception. It was after World War II and we were practically the only super power at that time and the growth of USSR, but now once again the only super power in the world.

We, at one time, took 33 percent of peacekeeping. As you know, we have gradually reduced our participation by virtue of our Congress voting to reduce the stipend that the U.S. contributes, and rightfully so, as other countries begin to be able to step up to the plate.

We are from 33 percent of peacekeeping, I think we are now at 22 percent. At one time we paid 33 percent of the overall dues. I think we are now down to 20 percent more or less of the overall assessment.

The U.S. is reducing and the other countries are sharing in more of the burden of keeping the U.N., but I also am very disturbed, as I have heard some of the statements from the Chairman about the lack of U.S. participation.

We will not ratify the treaty on landmines. Landmines only destroy people. I do not understand why we are anti-people, whether you are killing from abortion or killing from allowing landmines to go on, it is killings.

There is no reason why anti-personnel landmines should not be banned. But our Nation, our leadership, our President, our Secretary of State, our Senate, and our House will not—and it is the Senate prerogative—will not agree to a landmine treaty.

We will not agree to the banning of children soldiers. We can pontificate about how bad the U.N. is, but the U.S. refuses, held up by the President and the head of the Senate, refuses to say that children should not be soldiers, our Nation. It is a disgrace.

We can go on and on and on. There is no global warming. That is what they say, as we see all kinds of environmental turbulence in the world. We will not even consider Kyoto. As a matter of fact, it was never popular, but at least it was discussed. We threw it in the basket when the new Administration took over.

So as we talk about it and criticize the U.N.—and it certainly needs criticism believe me, there is a lot of criticism to go along and I can cite four or five—if people could tell me why we are against landmines, where the great leader, the queen out in Great Britain, Princess Di, championed, got the U.N., got the peace accord. Why are we against children soldiers? Why? Because we want to recruit in high schools. Now we don't even have people under 18. This is under 18 years old we are saying.

The United States Government will not approve a treaty saying that there should not be combatants under 18 years old. It is a disgrace. It is a disgrace. We will not ratify the proliferation of conventional weapons. We sold 55 percent of the conventional weapons right through for the last decade. Out of 38 billion sold, we sold over 20 billion of conventional weapons around the world.

The proliferation, the killing, the mob, the murders that are going on, it is the U.S. that is selling over 50 percent of conventional weapons in the world and we refuse to even participate in

the last U.N. conference on the proliferation of conventional weapons.

There is a lot of criticism to go around, believe me. The U.N. needs to be changed, but so do we have to change the philosophy of this Government, which refuses to deal with human rights issues, issues of war and peace, issues that go against human beings.

I am very pleased to hear our witnesses from the State Department and you might want to get into the answer for some of the lack of. I wish I had the whole list. It is about an 8 or 10 or 12 that we refuse.

We really finally snuck through, believe it or not, a convention against decertification. It went through one night, because it was unanimous consent about 3 years ago. The Convention on the Prevention of Decertification simply says the world should be concerned about the decertification which is going on throughout the world.

Water is becoming more scarce and it took us 6 or 7 years to even approve the U.N. convention to combat decertification.

Like I said, I am glad that we are having this hearing, because I wouldn't have thought of all these things. They are not even in my remarks.

Thank you very much, Mr. Chairman.

Mr. SMITH. Mr. Fortenberry.

Mr. FORTENBERRY. Thank you, Mr. Chairman, for calling this important hearing on the matter of the U.N. Commission of Human Rights.

As we seek to liberalize trade and improve friendly relations with countries around the world, it is essential that we not overlook those instances where a systematic abuse of the rights and dignity of the human person remain, whether it relates to political or religious dissent. While trade can present new opportunities for the advancement of human rights, it may also mask on-going abuses.

Mr. Chairman, after the markets close and the boardrooms empty, too often the unattended business of human rights remains and I am glad to have the opportunity today to address these matters as it relates to the U.N. Commission on Human Rights.

Mr. SMITH. Thank you very much.

I would like to now welcome our very distinguished witness from the Bush Administration, Dr. Mark Lagon, who is Deputy Assistant Secretary of State for International Organization Affairs and he has been that since January 2004.

Dr. Lagon has the lead responsibility for U.N.-related human rights and humanitarian policy, U.N. administration and reform as well as the IO Bureau's Public Diplomacy and Outreach Programs. Dr. Lagon previously served as a member of Secretary of State's Policy Planning Staff.

From 1999 to 2002, he served as a senior staff member for Senator Jesse Helms on the Senate Foreign Relations Committee.

Dr. Lagon is the author of the book, *The Reagan Doctrine: Sources of American Conduct in the Cold War's Last Chapter*.

Dr. Lagon, please proceed as you would like.

**STATEMENT OF MARK P. LAGON, PH.D., DEPUTY ASSISTANT
SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION
AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. LAGON. It is a pleasure to be here with you and with Members of Congress who are so manifestly interested in human dignity and in getting the U.N. to live up to its original purposes and its original intent.

I welcome the opportunity to present the Administration's views on reform of the U.N.'s key human rights' bodies and discuss ways that we can bolster the U.N.'s effectiveness in carrying out the U.N. Charter's solemn commitment to promote and protect human rights and fundamental freedoms.

As President Bush rightly reminds us, human rights and democracy are not the privileged of selected nations. They are the birth-right of every person and we need a U.N. that is equipped to advance these values, not just in rhetoric, but in good works on the ground.

Mr. Chairman, the U.N.'s human rights mechanisms are broken and they must be fixed. The U.N. Secretary-General Kofi Annan said himself in a speech at the Commission on Human Rights (CHR) 12 days ago:

"We have reached a point in which the Commission's declining credibility has cast a shadow on the reputation of the United Nations' system."

Mr. Chairman, as you know, some of the most egregious violators of human rights work through their regional blocks to gain nomination and election to the Commission on Human Rights in order to protect themselves and to protect their ilk from criticism. Some countries argue for the elimination of all country-specific condemnatory resolutions, except those targeted at Israel under item eight of the agenda, the only agenda item devoted to a single country.

We are increasingly confronted in the Commission with block voting, whether by the Africa group, the G-77 or the non-aligned movement, shifting the CHR's focus away from bedrock civil and political rights and toward economic, social and cultural rights, not because they aren't important, but because they are a diversion.

Use of the no action motion, which takes a resolution off the table, stifling its consideration, has proliferated, both at the Commission and at the counter body in New York, the Third Committee of the General Assembly, where human rights resolutions are also dealt with.

This year so far only one no action motion was introduced on Belarus and it failed. Three such motions were raised in the Third Committee in the fall session of the General Assembly and blocked resolutions on Belarus, Zimbabwe and Sudan from even being considered.

A sort of update on where we are in the 6th week of 6 weeks of the Commission on Human Rights currently ongoing, I should point out that despite terrible, negative trends and attitudes in the Commission, the United States, working with other nations, has had some success in this year's session.

The number of unbalanced and unfair resolutions aimed at Israel was one fewer than last year. We were successful in passing coun-

try-specific resolutions on Burma, North Korea, Cuba and Belarus and in the last two cases it was no mean feat. You did refer to the intensive effort and it is true.

On Sudan, we are working currently with the European Union to have the strongest possible text on the deplorable human rights situation in Darfur this week.

To address the Commission's myriad problems, the Secretary-General proposed, in his report on reform, to replace it with a smaller Human Rights Council. The council would be a standing body. In a way, this is the most important element. It will be around year-round, able to meet when necessary, not just the 6 weeks of the year that the Commission does. Its members would be elected, proposes the Secretary-General, by a two-thirds majority of the General Assembly and the members should have solid human rights records.

We did disagree with the earlier proposals of the High-level Panel on threats, the group of experts assembled by the Secretary-General to look at institutional arrangements, when it called for the Commission to include all U.N. member states.

We strongly agree, furthermore, with the Secretary-General that elected members should have a positive human rights record and should undertake to abide by the highest standards on human rights.

We look forward to engaging the U.N. and member states to work out the details of the council, including its precise size, its composition, its mandate, its relationship to other bodies and importantly, as a point you raised, Chairman Smith, how to involve non-government organizations so that they have a voice as well.

We want to make sure that the election to the council truly leads to a responsible set of council members and doesn't lead us back to the situation where some of the worst abusers are sitting in judgment of others.

The devil is of course in the details. If regional blocks can still pick slates of candidates for a fixed allotment of slots, a two-thirds vote may not affect much change. We could, instead, see more of what we witnessed last year.

A year ago, there was an election in the Economic and Social Council, in which the Africa group put up a slate of candidates—including Sudan—and returned Sudan to its membership. And the nations that were in the Economic and Social Council had no power to block that. The United States just walked out of the election, as a symbolic measure to indicate that something was wrong with the system.

Let us hope that we don't create a Human Rights Council that has the same problems in microcosm. We need to change the rules of the game.

Other efforts are necessary to make sure that the politics of the institution work. That is why we should work with other democracies to create and sustain a democracy caucus within U.N. bodies, the human rights bodies and other bodies. Because beyond institutional fixes, democracies must seize the initiative to save the human rights apparatus from oblivion.

Mr. Chairman, the Secretary-General also made important proposals for strengthening the Office of the High Commissioner for

Human Rights. The United States strongly supports increasing the capacity and effectiveness of that office.

The United States, in recent months, pushed hard for such increased capacity. Last year in 2004, the United States, working with Romania, Peru and East Timor, first introduced a resolution giving the Office of the High Commissioner a special coordinating role in promoting rule of law and democracy. And we, in fact, went further and provided funding to the Office of the High Commissioner to create a new position as a coordinator, a focal point for democracy building. In fact, this focal point idea inspired the U.N. democracy fund, proposed by President Bush in his last address to the U.N. General Assembly.

I, in fact, talked with Danilo Turk about this proposal and we are inching closer toward its coming to fruition. That proposal was included in the Secretary-General's report. The Secretary-General has embraced the idea of creating a U.N. democracy fund.

We are hopeful that the fund will be open for contributions soon so that it is plan board, a board of donors and democracies in particular can fund NGOs and other entities to assist in transitions to, and consolidation of, democracy.

There is an important role for the Office of the High Commissioner in monitoring and preventing human rights abuses on the ground, a kind of early warning role. And that is no less important than its role in technical assistance for rule of law and human rights.

The United States has repeatedly, and I have been involved in this personally, in urging through its diplomacy and its Security Council resolutions that the presence of monitors from the Office of the High Commissioner in Darfur be beefed up.

It has taken excruciatingly long for the U.N. bureaucracy to be able to hire and deploy monitors who can play a vital role in complementing the African Union's troops deployed in Darfur.

For some acute cases of repressive regimes that refuse to work with the international community, we believe it is very important to maintain the instrument of country-specific resolutions in the U.N.

However, the ability of the High Commissioner to offer advisory services, technical assistance, training, human rights and rule of law components in post conflict situations and monitoring of grave human rights situations, are also an important part of what the U.N. should be doing.

We agree with the Secretary-General when he recently said for much of the past 60 years our focus has been on articulating, codifying and enshrining rights, but the era of declaration is now giving way, as it should, to the era of implementation. Not only should we worry about what treaties people sign, but how they act at home to implement them. The High Commissioner's office has a crucial role to play in that implementation.

Let me close by looking at the Economic and Social Council, how it relates to this, the third body much in need of reform.

If the Secretary-General's proposed reform of the Commission is implemented, a new Human Rights Council would report directly to the General Assembly or stand alone as an independent U.N.

Charter body, like the Security Council. It would no longer report to the Economic and Social Council.

Most U.N. members acknowledge that ECOSOC is not fulfilling its responsibilities effectively. It has 54 elected members and is open to participation by all U.N. member states as observers. Its dilemma is that it is both too large and unwieldy for concerted action and too small to represent the full membership of the U.N. As such, it tends to add little value at all as an intermediary body between its subsidiary agencies and the General Assembly, to which the ECOSOC reports.

In conclusion, Mr. Chairman, let me thank you again for this opportunity to talk about an important topic. The Administration and I personally are passionate about the quest to achieve far greater credibility and effectiveness in the U.N.'s implementation of its mandate and to promote human rights and fundamental freedoms. And I welcome all sorts of questions and comments on your part.

[The prepared statement of Mr. Lagon follows:]

PREPARED STATEMENT OF MARK P. LAGON, PH.D., DEPUTY ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman, it is a pleasure to be with you today. I welcome the opportunity to present the Administration's views on reform of the UN's key human rights bodies and discuss with you ways to bolster the UN's effectiveness in carrying out the UN Charter's solemn commitment to promote and protect human rights and fundamental freedoms. As President Bush reminds us, human rights and democracy are not the privilege of selected nations; they are the birthright of every person. We need a UN that is equipped to advance these values, not just rhetorically but through good works on the ground. We are foursquare behind recent efforts to launch a serious process of UN reform, and we recognize, as Secretary Rice recently said, "there's an opportunity now . . . to make the kinds of changes and reforms that are necessary to update" the UN.

Mr. Chairman, the UN's human rights mechanisms are broken and must be fixed. UN Secretary-General Kofi Annan himself has said, "Unless we remake our human rights machinery, we may be unable to renew public confidence in the United Nations itself." We agree with him fully when he said at the Commission on Human Rights 12 days ago, "We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system."⁹ Moreover, he was right in saying "the Office [of the High Commissioner for Human Rights] is "ill-equipped . . . to meet the growing challenges that confront us."

COMMISSION ON HUMAN RIGHTS (CHR)

Mr. Chairman, as you know, some of the most egregious violators of human rights work through their regional blocs to gain nomination and election to the Commission in order to protect themselves and their ilk from criticism. At the same time, there has been a disturbing trend, against which we have fought, for developing countries to turn away from country-specific resolutions that single out and place under international scrutiny those countries with the worst human rights records. Even more pernicious, some countries argue for the elimination of all country-specific resolutions, except those targeted at Israel under Item 8, the only agenda item devoted exclusively to one country. We are increasingly confronted with bloc voting—whether by the Africa Group, the G-77, or the Non-aligned Movement—that is shifting the CHR's focus away from bedrock civil and political rights, and toward economic, social, and cultural rights.

We all recall when Libya, through the customary regional rotation scheme, became Chair of the Commission. The United States broke a taboo by merely calling a vote on that selection. At present, the following countries are currently serving on the 53-member Commission: Cuba, Sudan, China, and Zimbabwe—not exactly exemplars of human rights treatment of their own citizens. I suspect it is this glaring inconsistency between the Commission's calling and its membership that largely inspired the title of our session today (UNCHR: Protector or Accomplice?)

Use of the no-action motion—which takes a resolution off the table, stifling its consideration—has proliferated, both at the Commission and the Third Committee of the General Assembly, where human rights resolutions are also considered. While

this year only one no-action motion was introduced (and it failed), three such motions in the Third Committee in the Fall session of the General Assembly blocked resolutions of Belarus, Zimbabwe, and Sudan.

I should point out that despite these negative trends and attitudes in the Commission, the United States, working with other nations in Geneva has had considerable success at this year's session of the Commission on Human Rights, which is finishing its six-week session this week. The number of unbalanced and unfair resolutions aimed at Israel was one fewer than last year. Moreover, we were successful in passing country-specific resolutions on Burma, North Korea, Cuba, and Belarus—no mean feat, especially on the latter two, if I may say so. On Sudan, we are working with the European Union to have the strongest possible resolution on the deplorable human rights situation in Darfur.

To address the Commission's myriad problems—what Secretary-General Annan has called "a declining credibility and professionalism"—the Secretary-General proposes in his report, "In Larger Freedom: Towards Development, Security and Human Rights for All," to replace it with a smaller Human Rights Council. The Council would be a standing body, able to meet when necessary, rather than for only six weeks each year, as with the Commission. Its members would be elected by a two-thirds majority of the General Assembly and should have a solid human rights record. The Council would be mandated to review the human rights of every UN Member State periodically, but would be available to convene on short notice to deal with urgent crises or massive and gross violations of human rights. The Council would also be equipped to give technical assistance and policy advice on the promotion of human rights.

We support the Secretary-General's recommendations. We had earlier disagreed with the High-Level Panel, a group of experts assembled by the Secretary-General to look at institutional arrangements to confront current threats, when it called for "universalizing" the membership of the Commission to include all UN Member States. We also strongly agree with the Secretary-General that elected members should have a positive human rights record and should undertake to abide by the highest human rights standards.

We look forward to engaging with UN and other Member State officials to work out the details of the Council, including its precise size, composition, mandate, relationship to other UN bodies, whether and how to retain use of so-called "special mechanisms," such as Special Rapporteurs or Independent Experts, and whether and how to continue active involvement of non-governmental organizations (NGOs) in the work of the Council. We also want to be sure that election to the Council by the General Assembly truly leads to a responsible set of Council members, and does not lead us back to a situation where some of the worst abusers are sitting in judgment of others.

The devil, of course, is in the details. If regional blocs can still pick slates of candidates for a fixed allotment of slots, a two-thirds vote may not effect any change. We could, instead, see more of what we witnessed a year ago: the African Group returning Sudan to the Commission's membership in an election where the United States walked out in protest—unable to block the outcome. In addition, we want the shift to a Council to move us away from the regional-bloc voting that so often hampers the work of the current Commission. Our efforts to work with other democracies to create and sustain a "democracy caucus" within UN bodies are similarly motivated. Beyond institutional fixes, in the Commission or a Council, democracies must seize the initiative to save the UN human rights apparatus from utter disrepute.

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Mr. Chairman, the UN Secretary-General has also made important proposals for strengthening the Office of the High Commissioner for Human Rights. As Mr. Annan rightly points out, the role of the Office has expanded in recent years and is now engaged in conflict prevention, crisis response, and wide-ranging technical assistance, in addition to its longstanding advocacy work. Yet, the Office receives a scant two percent of the UN's regular budget to carry out its programs, and must rely on voluntary contributions.

Mr. Chairman, the United States strongly supports increasing the capacity and effectiveness of the Office of the High Commissioner for Human Rights. We welcome the Secretary-General's call upon the UN membership to strengthen the Office of the High Commissioner, as well as similar proposals of the High-Level Panel to boost the role and capacity of the High Commissioner's office in the work of the UN. We look forward to reviewing the High Commissioner's plan of action, pursuant to the request of the Secretary-General. The UN membership must put increased sup-

port for and provision of greater capacity of the Office of the High Commissioner among its highest priorities.

The United States has in recent months pushed hard for such increased capacity. In 2004, the United States, with Romania, Peru, and Timor-Leste, first introduced a resolution giving the Office of the High Commissioner a coordinating role in promoting rule of law and democracy among UN agencies and programs, and provided funding to create a new position in the Office to serve as a UN-system Focal Point for democracy-building.

This Focal Point idea, by the way, inspired the UN Democracy Fund proposed by President Bush at the UN General Assembly. The proposal for the Fund has been embraced by the Secretary-General in his Report. Now that we have completed our negotiations with the Secretariat, the UN is currently discussing the Terms of Reference for such a Fund with Member States and intends to establish the Fund soon. Meanwhile, we are discussing the development of the Fund informally, but actively, with several potential key donors. We are hopeful that the Fund will open soon for contributions, so that its planned Board of donors and democracies can fund NGOs and other entities to assist in transitions to and consolidation of democracy. I submit that the Democracy Fund could prove even more important than a new Human Rights Council or the High Commissioner's Office in enlarging freedom's reach.

The potential role of the Office of the High Commissioner in monitoring and preventing human rights abuses on the ground—and in carrying out proper early warning—is no less important than technical assistance. The United States has urged through diplomacy and Security Council resolutions that the presence in Darfur of monitors from the High Commissioner's Office be expanded. The UN bureaucracy—including in New York—has taken an excruciatingly long time to get monitors into the field to complement the African Union's crucial troop deployment in Darfur.

Another important area in which the High Commissioner could use additional resources is in the area of training, standardization, and professionalization of the so-called "special rapporteurs"—the UN term of art for private experts asked to research or monitor a situation and report back to the Commission or Commissioner. These measures would permit more effective and professional support for the special rapporteurs and provide more consistency and objectivity in their reports.

Mr. Chairman, let me be clear. We continue to place a high value on resolutions. In particular, for some acute cases of repressive regimes that refuse to work with the international community, we believe it is important to retain country-specific resolutions as a last resort. However, the ability of the Office of the High Commissioner to offer advisory services, technical assistance, training, human rights and rule of law components of post-conflict reconciliation, and monitoring of grave human rights threats are at the heart of what the UN should be doing.

It is time to move beyond mere standard-setting on paper to the on-the-ground work of improving human rights. The Secretary-General was right to have said, "The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms—the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation." The High Commissioner's office has a crucial role to play in this effort.

IMPACT OF THE ECONOMIC AND SOCIAL COUNCIL (ECOSOC) ON CHR

Mr. Chairman, let me turn to a third and final UN body in need of reform—ECOSOC. The UN Charter gives the Economic and Social Council (ECOSOC) broad responsibility for oversight of the UN system's activities in the economic and social, including humanitarian, domains. The Commission on Human Rights is among ECOSOC's 26 subsidiary bodies. If the Secretary-General's proposed reform of the Commission is implemented, the new Human Rights Council would report directly to the General Assembly or could stand as an independent Charter body like the Security Council. No longer would the human rights body report to ECOSOC.

Most UN member states acknowledge that ECOSOC is not fulfilling its chartered responsibilities effectively. It is our view that ECOSOC's limitations are inherent in its structure. ECOSOC has 54 elected members and is open to participation by all UN Member States as observers. ECOSOC's dilemma is that it is too large and unwieldy for concerted action and too small to represent the full membership of the UN. As such, it tends to add little value as an intermediary between its subsidiary bodies and the General Assembly, to which ECOSOC reports.

In conclusion, Mr. Chairman, let me thank you again for this opportunity to engage on such an important topic as UN reform in the human rights area, and to

commend you for your interest. This Administration, and I personally, am passionate about the quest to achieve far greater credibility and effectiveness in the UN's implementation of its mandate to promote and protect human rights and fundamental freedoms. I welcome your comments and questions.

Mr. SMITH. Dr. Lagon, thank you so much for your testimony and having observed you up close and personal during the 3 days I was in Geneva, I want to thank you for the truly remarkable job you did. And certainly our delegation there is working very hard, especially for country-specific resolutions.

I think one of the most important aspects of our efforts is to hold countries to account, and as I have learned in 25 years as a Member of Congress, when you are generic, everybody is onboard. When you get specific and when you begin talking about very specific data and evidence of wrongdoing, that is when human rights work really begins. I want to thank you again for your leadership.

I do have a couple of questions and one of them has to do with the whole rapporteur system, which in theory and on paper looks very effective, looks like very good people occupy many of those posts. For example, the rule of law issues that we had where you are sitting years ago, there was Param Cumaraswamy on Northern Ireland and policing there, because he had access.

I know that the Cuban special rapporteur has been denied access. There has been no access whatsoever to the prisons in Cuba, where there are something on the order of 400 political prisoners, including 75 of the best and the bravest and brightest and including Dr. Oscar Bissette, an OB/GYN who is now suffering immensely in prison because of his advocacy for human rights, and yet the Cuban Government denies the actual access and the ICR can't get in either to those prisons.

I recently had a meeting, while I was in Geneva, with Manfred Nowak, the rapporteur for torture, a very, very credentialed and very responsible U.N. leader on the issue of torture.

Our hope is that, in follow-up to an invitation he received from China, that he will be able to obtain his terms of reference, will have unfettered access and without retaliation by the Government against those with whom he sees, but frankly since this isn't the first time an invitation has been extended to the rapporteur, only to get bogged down by the fact that the rapporteur could not get in and have access the way he would want, so it becomes a ruse that the Chinese Government seems to engage in. They offer this seemingly ray of hope that their despicable use of the Laogai and their Gulags will now become a little more open.

The international community swallows it to some extent, almost hook, line and sinker, only to have no implementation and the rapporteur doesn't get in. We have seen this happen over and over again in despondent countries, and my question is: How can we reform the rapporteur system so that when they do have a mandate to go to a country that they indeed follow up and as to the offending country or the alleged offending country, like China, there is some kind of penalty?

Right now, we will probably witness, in the next couple of weeks, a lack of visit or it won't be a visit that will have that kind of unfettered access. And you know the Human Rights Commission meetings are over now and they were able to use that, I think ef-

fectively, to show, again, like a glimmer of hope, that there was some progress being made.

I remember speaking to the rapporteur for religious freedom a number of times in past meetings and discovered, to my dismay, that despite well-intentioned efforts, there was merely an exchange of letters going back and forth between offending countries, including China, where religious oppression is rampant as well. The Human Rights Council and perhaps a more robust rapporteur system.

It would seem to me that someone who refuses access by a specific rapporteur shouldn't be able to sit on a council or on the Commission if the reforms don't go forward, which I think they will. But if you could respond to that, I would appreciate it.

Mr. LAGON. You have connected the dots by, at the end there, focusing on what the punishment would be, whether you would be barred from the council. Let me return to that.

You are right to focus on rapporteurs. There are two kinds of problems with rapporteurs. There are those who just are in desperate need of kind of professionalization and a focus on their proper mandate. Most of the rapporteurs are rather good, well credentialed. Some of them don't really focus on the mandate as laid out. They look at pet projects and they steer their particular mandate—to mention one, a right to food—toward some politicized questions and where the Office of the High Commissioner should play a role.

That is where the follow-through from the vote in the Commission, or Human Rights Council if it is the successor body, should happen to train, to make sure that rapporteurs do their job and to deconflict them where they have overlapping mandates.

But then there is the problem of those nations that willfully try and resist giving access to rapporteurs. And there, let me talk about the general and the specific. In the general case, I think if there are standards that are developed for membership on the human rights body, if a nation willfully does not submit itself to transparency, is not willing to give access to rapporteurs, particularly a rapporteur that is established by a country-specific resolution to go look at a particular country, but also a torture rapporteur to go into China, then either by the culture of voting or specific rules, there should be some limitation.

To talk about the specific case of China, as you know—and I know you were unhappy and a lot of very decent human rights-promoting Americans were unhappy about not pursuing a resolution on China this year—one of the things that we focused on in not running a resolution this year, as one of the steps taken by the Chinese Government, was to set up terms of reference to let the torture rapporteur in and to also take steps to let the rapporteurs for arbitrary detention and religious intolerance in as well.

It is incumbent upon the United States, who has made a decision for 1 year not to run a resolution, that it holds the Chinese Government's feet to the fire. It is not just for the High Commissioner to make sure that they do their job, but indeed it is for us.

Mr. SMITH. If you could comment on why the human rights monitors were slow in being deployed to Darfur.

Mr. LAGON. Well certainly not for the lack of commitment by Louise Arbor, the High Commissioner. The Office of the High Commissioner is set up in a fashion that is different from some of the U.N. agencies.

The independent agencies, like the World Food Program or the U.N. High Commissioner for Refugees, have an in-house bureaucratic capacity. The Office of the High Commissioner is connected with the Secretariat.

To get the specialized kinds of background necessary even for younger people to get out as monitors, it is a somewhat cumbersome bureaucratic system to get people going.

I know in talking to the High Commissioner herself in her office in December that she said her first greatest frustration in her job was facing how difficult it was to get people into the field, and the fact that there are less than 25 monitors in an area as large as Darfur is appalling.

I return to the point I made earlier. They would complement the role of soldiers offered by the African Union nations. To have people there to play a deterrent role, to point out human rights abuses, that is a proper role for the U.N. and it shouldn't take that long, especially when the U.N. Security Council has spoken multiple times in its mandates that this is an important thing to do.

Mr. SMITH. One of our witnesses, as you heard in the opening, is Bob Fu, who was hoping to make more of the delegates aware of what torture implements look like, and for that was shown the door, if you will, in Geneva. My concern is, because it is not always a full-fledged democracy when we are talking about credentialing and a lot of the processes that are followed by the U.N., I was in Cairo for 7 days at the Cairo population control conference and frankly the rules of order that were followed were not the ones that we would recognize in any Parliament anywhere in the world. It was a process that I think was egregiously flawed. Outcomes were arrived at first and then people were told that they will be voting for this. It was an amazing process.

I am worried about the credentials of Woman's Voice International as to whether or not they might be thrown out and what would be the response of the Administration, if that were to happen?

Mr. LAGON. It is important, this role of NGOs. Two years ago when Libya took over the Chair of the Commission on Human Rights, sitting in the gallery in the U.N. complex in Geneva as an NGO, Reporters Without Borders sprinkled leaflets saying that Libya was an appropriate Chair, because they knew about torture. They knew about arbitrary detention, they knew about locking up reporters. And I saw U.N. guards snatch these things, pull out the people who had thrown out the leaflets, as if they were abusers.

When Bob Fu is pulled out for having displayed a device used for torture in China, one has to ask the question: Does it have something to do with Swiss law or U.N. regulations? Or does it have to do with the voice for the voiceless?

If it does spill into the accreditation of an NGO being removed or threatened, the United States will act aggressively.

You have asked me to testify on the Economic and Social Council. There is an interesting role that dictatorships play. They get

onto that Council so that they can get into mutual back scratching to become members of the Commission on Human Rights, but they also want to become members of the U.N.'s NGO Accreditation Committee, based on Economic and Social Council.

China and Cuba, for instance, have worked to harass such organizations as Jennifer Windsor's Freedom House and others by being members on that Commission. And the United States, every year, gets into battles trying to protect the accreditation of decent organizations and watch as surrogates for some dictatorships, front groups for dictatorships are proposed as alleged NGOs.

We will be there for the organization that Bob Fu is affiliated with and others when that fight occurs, but we will be facing dictatorships on that NGO Accreditation Committee.

Mr. SMITH. I appreciate you saying that. I had one experience and I will just be very brief about this. At the Beijing Women's Conference, I was there as well for 7 days, and I will never forget at the NGO forum I was due to speak on the coercive population control program in China and several purportedly Chinese NGO members came up to me and engaged in a conversation. I asked for their cards and every one of them had a state card. It was amazing to me that the Tibetans and other true NGOs that wanted to participate were precluded participation in that forum as well as accreditation at the Beijing Women's Conference.

Let me just ask you with regards to the membership of the new Human Rights Council. Do you think it would be based or will be based on regional representation? Let me also ask you: What impact would having the General Assembly vote on membership have on the United States and our desire to continue to participate in human rights deliberations?

Mr. LAGON. It is a very good question. Obvious parochial question that officials from the U.S. Government leap to when they hear a two-thirds vote is: How likely will the U.S. be on this body? Will it get elected with a two-thirds vote?

We don't know the answer to that. We know one thing from our friends in the civilized world, that when we are off the Commission on Human Rights, they find it frustrating, because other nations get to be the frontline of the fight for freedom.

The Europeans learned this the year that we were knocked off the Commission and it would probably be a good thing, not just for America, but indeed the world for the U.S. to remain on the Commission.

As far as elections go, to get into the weeds briefly, if you have a system where there is a specific number of slots for a particular region, that region can game the system. They can put forward a slate of candidates to equal the number of slots they have and they can eliminate the ability of other nations to affect outcomes of the elections.

If, however, for instance there were some minimum number of seats that any particular region would get, you know out of 20 seats the African region doesn't get an assured five, but it gets a minimum of three, and there is a real election based on qualitative standards about whether they are decent countries who will be responsible members, then elections can have the kind of impact that the Secretary-General has suggested.

Mr. SMITH. Finally, one of the most important things I think we do every year that becomes the basis for our action, vis-a-vis human rights, is proper reporting. Whether it be the Trafficking Victims Protection Act report or the reporting on religious intolerance or the fundamental document the State Department puts out every year, the *Country Reports on Human Rights Practices*, becomes a basis country-by-country for action and hopefully mitigation of human rights abuses, maybe even the ending of human rights abuses, but that is still a long way off in most areas.

The Secretary-General, I think, is thinking very seriously about having such a report produced by the United Nations and by the Human Rights Council. Is that something that would be advisable?

Mr. LAGON. A report is important. We have gone to great lengths over the years, based on congressional mandate to develop a strong report, one that really covers the territory. Then other reports that you have mentioned were added.

One has to make sure that there aren't biases built in. If the Office of the High Commissioner, for instance, produces a report, whether there is a selective focus on certain things.

There is a certain pattern in the U.N. system of the nations that play by the rules to disproportionately get the focus of condemnation.

That said, in general there has got to be some standard for making these decisions of who is a decent member in good standing to take part in a Human Rights Council as a successor body.

Mr. SMITH. Mr. Payne?

Mr. PAYNE. Thank you. I too was interested actually in the transformation of the recommendations and as I indicated on April 7, Secretary-General Kofi Annan stated that unless we remake our human rights machinery, we may be unable to renew public confidence in the United Nations itself.

He goes on to say in the material here the important work the United Nations in the past 60 years of articulating, codifying a framework of human rights standards, so forth and so on, but then we talk about how he proposed a major change in the three pillars of the U.N. human rights system, the treaty bodies, Office of the High Commissioner and inter-governmental machinery of the Commission, specifically calling for the streamlining and strengthening of the seven treaty bodies so that they can function as a strong, unified system.

He called on the U.N.'s membership to strengthen the Office of the High Commissioner, whose role had generally expanded beyond its initial advocacy work and servicing of human rights bodies to include wide-ranging technical assistance and engagement in conflict prevention and crisis response, and also suggested increasing the budget allocated for the Office and asked the High Commissioner to submit a plan of action by May 20, 2005.

Finally, of course, calling for the replacement of the 53-member Commission, with the smaller Human Rights Council.

In your opinion, one, do you think that those things can occur and secondly, who has the right to really abolish council? And do you think that by attempting to move these reforms that it can? I have heard you talk about less specific slots, but are these areas that are possible to achieve, in your opinion?

Mr. LAGON. You asked the question about not just whether it is a good idea, but whether it can happen. One bar is whether changes would require a change in the Charter.

If you made the Human Rights Council a Charter body on the same status as the Security Council, then you would actually need a revision of the U.N. Charter. And to get that, you would need a two-thirds vote, and we need to look at all the complicated issues of the potential enlargement of the Security Council and other things that would be proposed.

But to change the Commission on Human Rights and make it into a smaller council and have it report to the General Assembly is something that is within striking distance. It is something that could be done.

Currently, developing nations are raising questions in New York. The debate is beginning. Sort of actual debate about the contours of reform, heading toward a September 2005 General Assembly, in which a whole package of reforms will be considered.

Developing nations have misgivings about this Human Rights Council, I think for the very reasons that we might like the council, because there might be a degree to which the membership standards would increase.

We don't know yet whether the numbers are there to create the council, but this is a much more constructive proposal than universalized membership, and I think it is something that is doable. And we plan to work with the Secretary-General and other countries to see if we can get it done, and get it done when you get into the details in a way that actually helps.

Mr. PAYNE. It is interesting that the Secretary-General is kind of, you know, suggesting a smaller council, which seems to make sense. However, on the other hand, we hear about the expanding of the Security Council and actually increasing the five permanent members.

Of course, the Security Council five permanent members go back to, you know, over 50 years ago with the allies against the access at the end of World War II.

How do you think that fits in with the expansion going the other way? Would that complicate it or make it more difficult? There is the move for, as you know, the so-called streamlining. Whether it would be streamlined or not, I wonder what your opinion on that is.

Mr. LAGON. It is interesting that they seem to be going in different directions. We don't know how large the Human Rights Council might be.

There is an unfortunate degree to which the discussion of the Security Council is kind of the anchor of the whole discussion of U.N. reform and we hope that the pace at which that moves does not determine the pace of all other reforms. It shouldn't stand in the way if a consensus doesn't come together in the U.N.

I want to say a word about representativeness. Part of the discussion of the Security Council getting larger has to do with representativeness.

I just make a caution about the concept of democracies that is sometimes raised in the U.N. system. Sometimes when democracy is raised, they are talking about the one nation, one vote, one voice

representative system, and when many of the Governments in the U.N. system do not represent the consent of the governed, then maybe that is not really democracy.

However, streamlining of the Commission might be important, but I would point out something I had mentioned before. Perhaps the even more interesting thing is not the size of the membership, but how many weeks a year it meets.

Thinking this through, if it doesn't meet for 6 weeks a year, but meets year round, if there is a human rights crisis, if Darfur starts exploding as it did several months back, then this council could take it up.

Perhaps the bad actors could not defend themselves and marshall the forces to fend off criticism, if it isn't a focused 6-week session, in which they know when game time is. And I think that may be, even more than the size of the Commission, the most interesting part of the proposal.

Mr. PAYNE. That is very good. I do see that here in the proposal that it would be year round, rather than that specific 6 weeks, as you mentioned.

Let me just conclude by adding that a couple of my staff reminded me that I left out a couple of conventions that I feel strongly about that the United States refused to approve.

Of course, you are an Administration person, it is done by the Senate and you are not a Senator, so I am not blaming you. I am just mentioning it for the record, as you know.

Mr. LAGON. Thanks.

Mr. PAYNE. Don't kill the messenger, right? Convention on the rights of the child, along with the others I mentioned, international criminal court, which is extremely controversial, as we all know.

Convention on the elimination of all forms of discrimination against women—and we can't have a more stronger champion for rights of women than our Chairman, but once again that is a convention that we can't get through our United States Senate.

Even the convention on the law of the sea, as a matter of fact the conveniences, these flags of convenience, I thought that Liberia had a lot going because they are in Panama, where the flags of convenience comes from. However, if you look at the group that runs the flags of convenience, both in Panama and in Liberia are all retired United States military people for the last 50 years. So it is really a pretty good place for our military fellows who want to have a pretty good deal going on. It is really almost nothing to do with Liberia. They just simply pay the country a stipend.

It is really something we ought to take a look at some time, because the flags of convenience means that it is approved by those countries, Liberia or Panama, and ostensibly because these ships are seaworthy and if you want to get around, having seaworthy ships would cost more money, you go to Liberia or Panama and have it approved and a flag flies there.

So you know there are a lot of things that we could do, if we were serious about really trying to move forward, you know, human rights around the world and then some proliferation of small arms and conventional weapons.

We didn't want to participate in the convention on racism and xenophobia and let me just conclude by saying it is wrong that the

rapporteur has not been able to get into China. However, the same rapporteur cannot get into Guantanamo Bay because our Government refuses to allow him to go there to look at the rights of the prisoners there.

I think we have to be uniformly against things that are wrong. It is wrong not to be able to go to China, but it is wrong not to be able to go to Guantanamo Bay either. Thank you.

Mr. LAGON. If I could say a word in response to that. I know you don't intend me to defend every treaty and I don't mean to debate. With regard to the rapporteur on torture, we did provide, 2 weeks ago, a briefing for the rapporteur on torture during the Commission on Human Rights, having our special Ambassador for war crimes issues and DoD officials, who implement the Guantanamo detainee facility, to talk to Mr. Nowak. We are attempting to make steps in terms of transparency.

On the treaties you mentioned, especially the human rights ones, often the Europeans chide us, urge us to ratify, even call attention to them in U.N. resolutions that we ought to ratify such treaties.

One of the problems that arises is federalism. At the very same time the EU is trying to get us to understand that Brussels has competency on some issues, the European Commission and some things are left to the member states. We too have the question of not being able to compel some of our state governments to implement some aspects of treaties and that has stood in the way of some of the treaties.

You mentioned child soldiers. We have not signed on to the mother treaty on the convention on the rights of the child, but we did, despite that, sign on to and ratify an optional protocol on child soldiers attached to that treaty.

I would just say we are engaged on human rights and on trying to get the U.N. to live up to its potential. You know whether it is optional protocol on child soldiers or our assessment of 22 percent of the regular budget or 27 percent of the peacekeeping budget.

Mr. SMITH. Mr. Fortenberry?

Mr. FORTENBERRY. Thank you, Mr. Chairman and thank you, Dr. Lagon, for your testimony today. I appreciate it.

Let us say none of this comes to fruition and if there is not reform of the Commission on Human Rights this year, what actions would the U.S. Government consider taking at the Commission next year?

Mr. LAGON. The first place I would start, and I hope my colleagues from Freedom House would be pleased to hear this, is that we need to work all the more seriously in developing a coalition of the free countries.

A caucus of the democracies, which cuts across the regional blocks, is what we really need. There is a debilitating degree to which regional blocks, like the Asian group or the African group, circle the wagons from their nations being criticized.

There are nations that we may engage with in free trade or in diplomatic dialogue, but do have heinous human rights records.

We need to give a lifeline to those nations that are liberalizing and are free and rule of law-abiding so that they look to similar nations around the world and not just to their neighbors, who may be dictatorial.

If an African nation, like Benin or Mali as a liberalizing democracy, sees that it could turn to a caucus of the democracies as a place to caucus, just as you caucus with other members, and doesn't just have to work with the African States and be reprimanded if it is willing to criticize an African dictatorship, that would be a problem.

But yes, if the Commission continues to go in existence, we need to have a plan for how to improve it, because we can't have it, you know, sort of sputter toward oblivion.

The first place to start would be by creating a democracy caucus. That is taking our basic allies of Western countries and expanding the group to all the free countries to work together, because they really have about three-fifths the membership of the Commission on Human Rights and they ought to take it back.

Mr. FORTENBERRY. Is withdrawing from the Commission an option that has been considered and would this empower another form of caucusing or other movement that might try to obtain the same objective?

Mr. LAGON. The idea of whether our engagement in the Commission has been considered and reconsidered—when we were off the Commission for a year, in large part because the western group did not agree on a slate for us to be automatically elected and we bounced off for a year, the Administration and the President actually thought about whether to return. We made a proactive decision to see whether the Commission would incrementally improve if we got back on.

I think we can say the Commission on Human Rights would be even worse if the United States wasn't there. I think we can say the polemical nature of the Commission and its tendency to criticize us and Israel, rather than criticizing particularly repressive governments, would probably be unanswered or less strongly answered if we weren't there.

But it is worth looking at the legitimacy of this institution, especially when the Secretary-General himself says that it really adds to the disrepute of the U.N. system in general.

Mr. SMITH. Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman and Dr. Lagon, thank you for being here today.

Can you talk to us about our credibility on human rights, in light of the revelations on Abu Ghrab and the detentions at Guantanamo Bay?

When I came in, you were referencing something about Guantanamo Bay and so I didn't get it all. It appears now we do have a credibility gap. Being a Nation that believes in the rule of law, we need to practice it ourselves, if we are going to see democracy.

I just came back from Cutter and if I can just combine a theme that was heard over and over again in the 4 days we were there, it was that terrorism feeds on grievances and so there are a lot of grievances out there.

How is America exerting its willingness to live by its standard rule of law and what are we doing in these two instances to regain credibility?

Mr. LAGON. You ask a very good question and when we have talked to the States of the Middle East, of the Arab world, of the

Muslim world, the focus that the President has tried to make on frank discussion with dictatorial governments is that you have to liberalize or you are going to increase the pressure cooker of dissent, the very dynamic you are talking about, that is important. We do need to live our values.

As far as Guantanamo goes, this year when we went to the Commission on Human Rights, instead of only taking our agenda of who we wanted to criticize, we thought we owed it to the international community to explain ourselves and try and offer transparency.

So in the 2nd week of a 6-week Commission, we sent an inter-agency team, led by the official in the Defense Department who handles the detainee facilities. So he explained what our policies are to other member states and even to NGOs, even to the Amnesty Internationals and Human Rights Watches who occasionally turn their spotlight on us, as well as dictatorships.

In the 4th week of the Commission, as I mentioned earlier before you came in, our Ambassador for War Crimes Issues went and offered a briefing to the various rapporteurs on torture, on arbitrary detention and so on about our detainment policy. We have tried to take steps.

On Abu Ghraib, it is important to think about how the world looks at us when that happens. I have to tell you that in the days after the revelations came out, you know I was literally sick to my stomach. I am an official who works on trying to promote human rights. It is sickening.

But the distinguishing quality of the U.S. Government, compared to some others, is what it does when such revelations come up. We have tried to get to the bottom, whether there was something systematic, something that was systemic that led to this. It doesn't look that way, but in any case, a country with rule of law has to root out and punish those who are responsible.

We find when we deal with some other countries, who we are hoping to encourage to liberalize, that in fact the message does get across when we have a quiet discussion with them, that a punishment for the perpetrators is noticed and it harms our reputation, having had this terrible set of events occur, but our reputation is not depreciated if one looks at how we have gone out to try and punish those who are responsible.

Ms. WATSON. If I might, if I still have a moment, What does or how does the federalism argument prevent us from ratifying treaties? Could you give us some specific examples?

Mr. LAGON. Sure. Again, I don't want to throw out federalism as the reason that we can't sign on to every treaty, but there are treaties like the convention on the rights of the child, the convention on the elimination of discrimination against all women, in which the commitments that would be made would be commitments that would have to be made by state governments.

Our colleagues who also have Federal systems, like the Canadians who are great human rights boosters, understand this limitation.

There are other reasons that we have raised about some of those human rights treaties that causes problems. We are Americans. We have a culture. Our legal culture is one of no guile. We think, how

is that going to work in our legal system or a number of other countries are much more comfortable with the signing of the treaty and not take a little more lightly the implementation?

There are other things besides federalism, but federalism is something that consistently comes up. I wanted to give an example of a problem.

Ms. WATSON. Thank you, Mr. Chair.

Mr. SMITH. Thank you very much, Ms. Watson.

Let me just conclude with a few final questions, if I could. The \$10 million that the Bush Administration has requested for the democracy fund, if you might want to touch on that, because I think that was very important, at a time when the budget is very lean, to ask for that, I think, signals a very true commitment to building the arsenal of democracy through persuasion and by having countries networking with one another.

I think we will get further adherence in that caucus, if we put some resources into that effort. If you could touch on that, I would appreciate it.

Just another question. I was very dismayed to read the Human Rights Committee—and I did raise this with Ms. Arbor when I was in Geneva in mid-March—admonished Kenya to change its laws protecting the lives of the unborn child in that country.

I have read virtually every U.N. document, I think. I don't think I have missed any. Every human rights treaty. You mentioned the convention on the rights of the child.

During the previous Bush Administration, I gave the speech in New York in favor of it, even though there were some concerns and some reservations that the U.S. Government had, and noted that the convention on the rights of the child, in its preamble, makes it very clear that the child, by reason of his or her immaturity, including the unborn child, are deserving of protection.

It seems to me in 2005, when we have ultrasound technology and microsurgery, where unborn children can be treated as patients, that when Tony Blair sees one of the newest diagnostic tools available, the 3-D ultrasounds where the baby is literally walking inside the womb and says maybe they need to revisit the 1967 abortion control act in Britain, in the U.K., that there is some re-appraisal going on that these children need to be protected, male or female, regardless of race.

They are precious and certainly U.N. documents in the past have recognized that, but virtually every treaty, including CDAW, does not convey in any way, shape or form a right to abortion.

I was in Cairo, as I mentioned in my opening comments, when the previous Administration tried, unsuccessfully, to craft an international right to abortion and they lost in a very, very profound way.

The sovereignty of a country to make their own laws, vis-a-vis pro-life or not was left with the sovereign country, and abortion as a method of family planning was not going to be promoted at all. That was right in the document.

My point is that there is nothing in these treaties to suggest that the implementing bodies need to promote this and yet Kenya was told they need to change their law. Poland in like manner. Several

countries in Latin America, by CDAW panel of experts, have been told the same thing.

It seems to me that there is freelancing going on here. I myself consider, and I know there is disagreement even on our Committee with regards to this, that the most fundamental of all human rights is the right to life of everyone born or unborn and then every other right—religion, freedom of assembly, speech, everything else—gathers around that basic fundamental right.

I frankly take a back seat to no one on promoting human rights. I have been here 25 years and work on all of the issues, from torture to religious freedom. The Tortured Victims Relief Act is a bill that represents some NGOs I wrote and it is law. We have done three of them so far and we are working on a fourth: The Trafficking Victims Protection Act of 2003 bill—and we have another one that we are working on right now—was my law.

When it comes to protecting the innocent and those who are at risk and vulnerable, I take a back seat to no one and so I resent, frankly, Dr. Lagon, when a U.N. body appropriates unto itself the ability to promote an abortion agenda, when there is no mandate, zero mandate. Beijing, Cairo, Asia plus 5, Beijing plus 10, none of them conveyed this right to abortion and yet these experts are telling these countries that they need to change.

My point is, a new Human Rights Council may take unto itself those powers and mandates that they don't possess. How do we guard against that and what are we doing to try to stop that? It seems to me that is not even an overreach. That is promoting an agenda that is antithetical to protection of innocent life, in this case the unborn.

Finally, on the question of torture, it seems to me the Administration—and I say this as a criticism—has not had the appropriations process here—so Congress needs to be criticized as well—has not reached the authorized level for tortured victims relief centers, either domestically, which would be your bailiwick as it would be Health and Human Services'. But also on the foreign aid side. USAID has not done all it can do to reach that level so that we have these torture victim centers throughout the world.

Not only does it help rehabilitate someone who has been traumatized in the most despicable of ways, who may be suffering from posttraumatic stress disorder and other problems, but it also becomes a tour of enforcement so that the doctors, those who are part of these centers and the victims themselves especially are able to bear witness against the perpetrators so that there is a check and hopefully an accountability, which leads to prison sentences for those who commit torture.

These centers are worth their weight in gold and yet they are underfunded. Could you respond to those?

Mr. LAGON. Sure. All of these are very important issues. With regard to the U.N. democracy fund, yes, the Presidential budget request coming up in the winter passed, included \$10 million. That is the very least that a new function deserves. These are lean times budgetarily. To get something started we really need to find some seed money to help this come to being.

The Secretary-General has taken steps by embracing this idea. Other nations will come together to discuss terms of reference for

it being set up. The United States does need to step forward, having helped hatch this idea and we could use the help of Congress in finding that money.

With regard to abortion, it is interesting you talk about freelancing. There is a commitment on the part of other Western countries—Europeans, Canadians, New Zealanders—to look at the abortion issue and to try and push it in resolutions and in various U.N. bodies.

If there were $\frac{1}{100}$ th the interest in the dignity of the unborn that there is interest in fighting the U.S. death penalty in those quarters, it would be an interesting turn of events.

You point out the Human Rights Committee. The Human Rights Committee is the treaty implementation body for the international covenant on civil and political rights and it singled out Kenya and Poland for human rights problems, related to pro-life laws.

This is a matter of prioritization and the U.N. system ought to focus on questions of repression and repressive countries, rather than the social agenda of Western elites, with regard to so-called reproductive rights.

One sees this trying to stretch what is out there as the consensus. You know since we have discussed this right before the Commission on Human Rights, it was the Commission on the Status of Women, an annual meeting in New York. It was the 10th anniversary of the Beijing Women's Conference.

There was an effort by some to suggest that in reaffirming the Beijing Women's Conference documents that there were abortion rights established internationally. There is really a consensus out there that this is a domestic question, a terribly sensitive moral question.

I have a view. It happens to be the same as the President of the United States, but there are those who try and stretch it and we succeeded at this 10th anniversary of the Beijing Women's Conference on establishing that there is no definitive international right to an abortion that has been established by the U.N.'s women's rights activities.

That is a question left up to sovereign states and you and I have a position on this on our sovereign state.

With regard to torture, I do have a hand in this. Part of the funding in the IOMP account goes to the voluntary fund for victims of torture and then that money actually comes back and helps centers in the United States. Like those who are victims of trafficking, those who are victims of torture should be thought of as refugees, people to be helped, and those centers are vital. They are really big bang for the buck to help individuals who have gone through horrible suffering and the United States is a big believer in voluntary funding in the U.N. system.

If you give voluntary funding to things that work, there is a way of testing whether there is a good effect. Many things that are in the U.N. system, to circle back to the question of U.N. reform, where there are assessments and dues, there is a certain lack of accountability, but there is pressure that is placed on an activity, if it is voluntarily funded.

This area, the voluntary fund for the victims of torture, is sensitive and those who put forward money, like we do and you do in

appropriating it in the Congress, respond to that track record of actually helping human beings every day.

Mr. SMITH. Thank you. Just to conclude, hopefully we can continue this conversation. There is a deep concern that some of the best and most effective centers, I have it and others on the Committee have it, have lost their funding this year, and I think that is a terrible loss of a resource, wherein many people who have been treated before, referrals that are being made that cannot be accommodated, go unhelped.

So perhaps we can continue this going forward, because if it is a resource problem, we need to come up with additional resources and we will need your help to do so, Dr. Lagon. Thank you.

Let me thank you for your being here today. Unless you have anything you would like to add in conclusion.

Mr. LAGON. No. It was a pleasure to join you today and I am happy to talk informally with you over time, as we have tried with the House International Relations Committee staff. We aren't here only to brief on the Commission on Human Rights when it is in season, but ourselves year round. So we are ready for your call.

Mr. SMITH. You have been most responsive and we deeply appreciate that and thank you for your service.

[Whereupon, a short recess was taken.]

Mr. SMITH. We will resume the hearing of the Committee on Africa, Global Human Rights and International Operations.

I would like to introduce Mr. Bob Fu, who is the President of China Aid Association, an organization he founded after fleeing to the United States as a religious refugee in 1997, from the People's Republic of China.

Mr. Fu was born and raised in China, attended the School of International Relations of People's University in Beijing and later taught English to Communist Party officials. In addition, Mr. Fu pastored a house church in Beijing, until he and his wife were jailed for 2 months in 1996 for illegal evangelism.

We will then hear from the Honorable Richard Williamson. Ambassador Williamson is a partner in the Chicago-based international law firm of Mayer, Brown, Rowe and Maw. His government service spans more than two decades and most recently he served as Ambassador and U.S. Representative to the U.N. Commission on Human Rights.

In addition to serving as the Assistant Secretary of State for International Organization Affairs and the Assistant to the President for Intergovernmental Affairs at the White House from 1981 to 1983, he is the author of three books, the most recent being *The United States and U.N. Peacekeeping*.

We will also hear from Mr. Joseph Loconte, who is the William E. Simon Fellow in Religion and a Free Society at the Heritage Foundation, where he examines the role of religious belief in strengthening democracy and reforming civil society. He also served as the Deputy Editor of *Policy Review*, where he wrote widely about religion and politics. Mr. Loconte is the author of several books, the most recent being *The End of Illusions: Religious Leaders Confront Hitler's Gathering Storm*.

Then finally we will hear from Ms. Jennifer Windsor, who is the Executive Director of Freedom House, at which she oversees the management of Freedom House's operations around the world.

Prior to her work at Freedom House, she worked at USAID, most recently as Deputy Assistant Administrator and Director of the Center for Democracy and Governance.

Mr. Fu, if you could begin.

STATEMENT OF MR. BOB FU, PRESIDENT, CHINA AID ASSOCIATION

Mr. FU. Thank you, Mr. Chairman, for inviting me to testify before you today.

I would first like to request that my speech, delivered at the parallel meeting and the plenary session during the 61st UNCHR in Geneva, be entered into the congressional record as part of my testimony.

Mr. SMITH. Without objection, it will be made a part of the hearing record.

Mr. FU. I also want to include an affidavit, signed by Mrs. Deborah Fikes, the Executive Director for Midland Ministerial Alliance, Texas, to be entered into the congressional record as supporting evidence for my testimony.

Mr. SMITH. Without objection.

Mr. FU. Mr. Chairman, Members of the Committee, I am honored to testify to the personal account of what happened to me during my participation of the 61st UNCHR meeting.

Invited by A Woman's Voice International (AWVI), a U.N.-recognized U.S.-based non-partisan international human rights organization, I led a group of human rights activists, Christian ministers and Chinese victims for religious persecution from Midland, Texas to participate in the 61st UNCHR meeting in Geneva.

I spoke at a parallel meeting on March 30 and the plenary session on April 5 on religious repression, torture, sexual abuse and arbitrary detention in China.

Ms. Liu Xianzhi, a 33-year-old member of a house church who escaped from China to the United States after serving 6 years in a Chinese labor camp, recounted her own personal experience of torture, sexual abuse and arbitrary imprisonment in China.

Videotape footage regarding an extrajudicial killing was also shown. Evidence of torture, forced labor and religious repression was produced. A secret official document regarding the current crackdown on unregistered religious groups in China was also exposed.

Mr. Chairman, the reason my presentation at the plenary session became an international incident was primarily because of my demonstration of a torture device used by the Chinese interrogators against the hundreds of religious victims for false confessions and the subsequent retaliation protest and maneuverings by the Chinese Government delegation to the U.N.

The Secretariat of the U.N. Human Rights Commission came under immediate and intense pressure from the Chinese delegation to expel me and all of the delegates representing A Woman's Voice International. Although the Secretariat refused to expel all delegates of AWVI, I was unfairly expelled. The Chinese delegation

then virtually ground the Commission proceedings to a halt for nearly an hour by making excessive demands upon the Secretariat's time and immobilizing the regular proceedings of the Commission.

During this incident, I believe that my personal safety and that of my family has become endangered.

On Tuesday, April 5, 2005, at approximately 12:16 p.m., I gave my oral intervention regarding Chinese religious persecution and torture tactics on behalf of A Woman's Voice International under item 11 on religious intolerance.

After I talked about our recent findings, that one of the three arrested house church pastors I mentioned in my presentation, Poast Cai Zhuohua from Beijing, was tortured repeatedly by electric shock batons by his interrogators in exchange for false confessions against him, I demonstrated for 6 seconds, by holding the device above my head, how the electric shock baton recently brought out of a Chinese prison is used. That 6-second demonstration was regarded by the Chinese delegation as a direct threat to their security.

Mr. Chairman, I want you to allow me to demonstrate this electric shock baton we recently obtained before you and the audience, that is used against hundreds of thousands of prisoners of China even now.

I promise you I won't even use it for my self defense, but it is a torture device. This is a smaller one than the one that was confiscated at the U.N. I would just demonstrate this. It has already lost its electricity, the battery.

Immediately following my intervention, the Chief of U.N. Security escorted me and Mr. Mina Bahgat, attorney and a friend of A Woman's Voice International, outside. I should make correction. Mr. Mina Bahgat is not a representative, but a friend.

My U.N. badge was abruptly ripped from my neck, without even my permission and without even giving me any explanation.

I explained that I had permission from this very U.N. security guard, prior to giving my oral intervention, and I produced his business card and told him both Mrs. Deborah Fikes and I had spoken to him and two of his colleagues on Friday, March 1, 2005.

I immediately contacted Mrs. Deborah Fikes by phone and asked the Chief of Security to speak with her, in order to collaborate my story. He declined to speak to her over the phone.

The Chief of the Security grabbed both Mrs. Fikes' and his own business card from my hand and his business card, given to Mrs. Fikes and me on April 1, contains his handwritten extra contact information.

I also told the security that my assistant, Mrs. Melissa Rasmussen, and I talked by phone with Ms. Yoko Adachi, the Assistant to the Secretary of UNCHR, at about 12:30 p.m. April 1 to get permission to demonstrate the torture device at the plenary session, and after she talked with her supervisor, she told me the Secretary's office has no problem with that. I have my phone record as evidence.

The Chief of Security refused to hear any further explanation. At this point, a member of the Chinese delegation just stood beside us and made an oral complaint in front of us to the Chief of Security.

The young woman explained that the Chinese delegation was concerned for their safety, because I brought a weapon into the assembly.

After a 20-minute wait, the Chief of Security, the security guard of U.N., had me escorted outside the U.N. building and I was put in a security car and dropped off the premises.

I asked the Chief when they would return the electric shock baton, which is my private property. I was told, you are done today. I was asked by the Security Chief to write down my home address in the U.S. and he told me he might send that device back to me after he filed a report by Friday, April 8, 2005.

Along with Mr. Thomas Jacobson, the U.N. representative for Focus on the Family, I returned to the U.N. about an hour later after I was expelled and demanded my badge back. After calling his supervisor, the security at the gate told me that I can't get my badge back because the badge is U.N. property.

Meanwhile, Mr. Jacobson contacted the United States mission in Geneva to express his concern over my unfair treatment. He was told the representative from the U.S. mission will talk with the U.N. security at 3 o'clock p.m. that afternoon to demand my U.N. badge back.

According to those attending the second session on Tuesday, April 5, 2005, the Chinese delegation engaged the Chairman in more than 40 minutes debate regarding my intervention and the so-called insulting nature. It was within this 40-minute debate the Chinese delegation addressed on the record the device I brought as a police weapon.

The Chairman forwarded the Chinese delegation's complaint to the NGO office as they had proper jurisdiction to deal with NGO complaints.

Today neither my office nor anyone from A Woman's Voice International has been approached or contacted for interviews or verifications of the facts of what happened at the U.N.

The U.N. report on the relevant procedures upon which my badge and the electric shock baton were confiscated was never sent to us.

On April 6, 2005, A Woman's Voice International did issue an apology letter to the Chinese delegation on misunderstandings between AWVI and the U.N. over the demonstration of the torture device. AWVI also reiterated that we believe we have had the prior permission to bring and demonstrate that torture device as part of my testimony.

Mr. Chairman, from what happened over this incident, I personally have two major concerns. Number one, the way the U.N. NGO office handled this matter was very arbitrary and inconsistent. I was never given a copy of the procedures it followed when responding to the Chinese delegation's protest. The office never spoke to anyone from my delegation in Texas regarding the conversations with security and UNCHR's secretary office prior to the use of the electric device.

The Security was unwilling to collaborate my explanation of the misunderstanding. The Security and NGO reports, which were given to China, will be definitely one-sided, incomplete and inaccurate.

It is clear that due process has not been availed to me and A Woman's Voice International.

Number two, Mr. Chairman, as a former Chinese Christian prisoner, I have held great respect and high expectations upon the UNCHR, which is supposedly the highest authority and the institution on this earth with the stated mission to protect and promote human rights for all.

However, given what I have experienced and testified, I think that certain countries, with the poorest of human rights records and worst violators, have managed to seize control and cripple the functionality of the U.N. Commission on Human Rights, and Mr. Secretariat, as you mentioned previously in the hearing.

The issue of reform for various U.N. bodies is being discussed in the U.S. and internationally. The time is ripe to consider fundamental reforms to restore the focus of this Commission to its original purpose and to remove control of the Commission from the worst violators.

Mr. Chairman, about 9 years ago I was forced into a police car and taken from my home to prison by the Chinese Public Security Bureau in Beijing for alleged illegal religious activities.

Sadly, this is the second time I have been put into a police car and it was done by the U.N. security guards.

The only reason I was treated like that was because of a complaint filed by representatives of torturers. That very torture device is being widely used, even today at this moment, against the hundreds of thousands of victims of conscience.

As the device is described, as is the specifications, it is, "An ideal tool for the Chinese law enforcement officials."

Human rights violations, including torture against those prisoners of conscience and religious beliefs in China, should be stopped immediately.

Before we can accomplish that, we must first reform the very institution designated to protect human rights for all, an institution that even now is intolerant of demonstrating the torturer's cruel device.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fu and material submitted for the record follow:]

PREPARED STATEMENT OF MR. BOB FU, PRESIDENT, CHINA AID ASSOCIATION

Thank you for inviting me to testify before you today. I would first like to request that my speeches delivered at the parallel meeting and the plenary session during 61st UNCHR in Geneva be entered into the congressional record as part of my testimony. I also want to include an affidavit signed by Mrs. Deborah Fikes, Executive Director of Midland Ministerial Alliance, Midland, Texas be entered into the congressional record as important supporting evidence for my testimony.

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cial killing was shown. *Evidence* of torture, forced labor, and religious repression was produced. A *secret official document* regarding the current crackdown on unregistered religious groups was also exposed.

Mr. Chairman, the reason my presentation at the plenary session became an international incident was primarily because of my demonstration of the torture device used by the Chinese interrogators against hundreds of religious victims for false confessions and the subsequent retaliation protest and maneuverings by the Chinese government delegation at UN. The Secretariat of the UN Human Rights Commission came under immediate and intense pressure from the Chinese delegation to expel me and all of the delegates representing A Woman's Voice International. Although the Secretariat refused to expel all delegates of AWVI, I was unfairly expelled. The Chinese delegation then virtually ground the Commission proceedings to a halt for nearly an hour by making excessive demands upon the Secretariat time and immobilizing the regular proceedings of the Commission. During this incident, I believed that my personal safety and that of my family has become endangered.

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Immediately following my intervention the chief of UN Security escorted me and Mr. Mina Bahgat, an attorney and a representative of A Woman's Voice International outside and my UN badge was abruptly ripped from my neck without any explanation. I explained that I had permission from HIM prior to giving my oral intervention. I produced HIS business card and told him both Mrs. Deborah Fikes and I had spoken to HIM and two of his colleagues on Friday, March 1, 2005. I immediately contacted Mrs. Deborah Fikes by phone and asked the chief of security to speak with her in order to corroborate my story. He declined to speak to her over the phone. The Chief of Security grabbed both Mrs. Fikes' and his own business card from my hand. His business card given to Mrs. Fikes and me on April 1 contains his handwritten extra contact information. I also told the security that my assistant Mrs. Melissa Rasmussen and I talked by phone with Ms. Yoko Adachi, the assistant to the secretary of UNCHR at about 12:30 PM, April 1, to get permission to demonstrate the torture device at the plenary session, and after she talked with her supervisor, she told me the secretary's office has no problem with that (I have my phone record as evidence.) The chief of security refused to hear any further explanation. At this point a member of the Chinese Delegation made an oral complaint in front of us to the Chief of Security. The young woman explained that the Chinese Delegation was concerned for their safety because I brought a weapon into the assembly. After a 20 minute wait the Chief of Security, the security guard of UN had me escorted outside the UN building and I was put in a security car and dropped off the premises. I ask the Chief when they would return the electric shock baton, which is my private property, I was told "you are done today" and I was asked by the security chief to write down my home address in the US and he told me he might send that device back to me after he files a report by Friday, April 8, 2005.

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According to those attending the second session on Tuesday, April 5, 2005 (3:00 PM); the Chinese Delegation engaged the Chairman in a 40 minute debate regarding my intervention and its so-called insulting nature. It was within this 40 minute debate that the Chinese Delegation addressed (on the record) the device I brought as "a police weapon." The Chairman forwarded the Chinese Delegation's complaint to the NGO office as they had proper jurisdiction to deal with NGO complaints.

Today, neither my office nor anyone from the Woman's Voice International has been approached or contacted for interviews or verification of the facts of what happened at the UN. The UN report on the relevant procedures upon which my badge and the electric baton confiscated was never sent to us.

April 6, 2005 A Woman's Voice International (AWVI) did issue an apology letter to the Chinese Delegation on misunderstandings between AWVI and the UN over the demonstration of the torture device. AWVI also reiterated that we believe we have had the prior permission to bring and demonstrate that torture device as part of our testimony.

Mr. Chairman, from what happened over this incident; I personally have two major concerns:

1. The way the UN NGO office handled this matter was very *arbitrary and inconsistent*. I was never given a copy of the procedures it followed when responding to the Chinese Delegation's protest. The office never spoke to anyone from my delegation in Texas regarding the conversations with security and UNCHR secretary officials prior to the use of the electric device. The security was unwilling to corroborate my explanation of the misunderstanding. The security and NGO reports which were given to China will be definitely one-sided, incomplete and inaccurate. It is clear the due process has not been availed to me and A Woman's Voice International.
2. Mr. Chairman, as a former Chinese Christian prisoner, I have held great respect and high expectations upon the UNCHR which is supposedly the highest authority and institution on this earth with the stated mission "to protect and promote human rights for all". However, given what I have experienced and testified, I think that certain countries with the poorest of human rights records and worst violators have managed to seize control of and cripple the functionality of the UN Commission on Human Rights and its Secretariat. The issue of reform of various UN bodies is being discussed in the U.S. and internationally. The time is ripe to consider fundamental reforms to restore the focus of this Commission to its original purpose and to remove control of the Commission from the worst violators.

Mr. Chairman, about nine years ago, I was forced into a police car and taken from my home to prison by the Chinese Public Security Bureau in Beijing for alleged "illegal religious activities." Sadly, this is the second time I have been put into a police car and it was done by UN security guards. The only reason I was treated like that was because of a complaint filed by representatives of torturers. That very torture device is being widely used even today, at this moment, against hundreds of thousands of victims of conscience. As the device is described in its specifications it is an "an ideal tool for the Chinese law enforcement officials."

Human rights violations, including torture against those prisoners of conscience and religious beliefs in China, should be stopped immediately. Before we can accomplish that, we must first reform the very institution designed to protect human rights for all. An institution that even now is intolerant of demonstrating the torturers' cruel device.

Thank you, Mr. Chairman.

BOB FU'S SPEECH
DURING THE 61ST UN HUMAN RIGHTS CONFERENCE, GENEVA—MARCH 30, 2005

Ladies and Gentlemen, Honorable Lord Chan, respected panel members, guests, and friends:

First of all, on behalf of over 80 million members of the Chinese house churches, I want to extend our deep gratitude to A Woman's Voice International for inviting us here for the second time in UN history to speak for this previously voiceless group.

Let me state that the condition of religious persecution in China overall has steadily deteriorated—particularly since the year 2002. Though it's difficult to give an exact number, without including Falun Gong practitioners, 20,000 plus members of underground religious groups have been arrested, detained, kidnapped or placed under house arrest. Hundreds of churches and homes have been destroyed. One would expect an improvement once the new leadership took office in 2003. The reality is quite the opposite. Within the first 9 months of 2004 we have recorded over 400 arrests of house church pastors. Just within the month of September, thirteen pastors were formally sent to re-education through labor in Henan Province alone. One of these pastors, Pastor Ping Xinsheng, lost consciousness three times since his arrest August 6 because of repeated beatings by his interrogators.

We have so many stories to brief you about and so many voices that need to be heard, but today I want to focus on three things:

1. Firstly, let me turn to the situation of injustices done to the South China Church. Over the past 15 years period, within this church alone, 2071 believers were formally arrested or detained or sent to brainwash classes for total *403 years, 11 months and 6 days. This doesn't include 3 life sentences*. Over 3 million Chinese RMB and numerous pieces of private properties were illegally confiscated with 49 homes were raided and destroyed. Numerous of men and women believers were tortured and many, especially women like Ms. Liu Xianzhi, were sexually abused and molested during their interrogation to obtain the false evidence against Pastor Gong.

Ladies and gentlemen, I want you to pay attention concerning the rape charges brought against Pastor Gong by the government prosecutors. In the first trial, Pastor Gong was accused of having raped 15 female members of his church. In the re-trial, the so-called rape victims were reduced to four, and their first names were not even mentioned, and some of the so-called "hard" evidence including a piece of DNA evidence from a child who was alleged as pastor Gong's illegitimate child mysteriously disappeared. Moreover, we have evidence showing recently the Chinese government is using a few former members of SCC starting another round of smear campaign by spreading rumors accusing pastor Gong raping 100 women. After having done a thorough investigation including hundreds of hours interviewing with these so-called "victims" in the government list, today I can tell you with a clear conscience and responsible professional view that the rape charge against pastor Gong is a totally fabricated one. Another charge against pastor Gong and some other members of the SCC is that pastor Gong was accused of organizing an assault campaign against those "church betrayers". Again, China Aid will support the Chinese government to bring anyone to justice if his or her action is found in violation of the Chinese law no matter what religion he or she belongs to. However, evidence we collected shows that in this case the government prosecutors were making some disable individuals on the street with reward to accuse members of the SCC assaulting them. Ironically in the trial court, neither the accused members of the SCC nor some of these accusers would admit they knew each other. One has to wonder how much legitimacy these court-approved evidence has. We call upon the UN to send a team of international impartial forensic experts to re-exam the whole case of SCC;

Ladies and gentlemen, unfortunately, the type of extreme and inhuman torture and sexual abuse doesn't happen to Ms. Liu Xianzhi's church members alone. One of the most common methods for torture by the Chinese interrogators is the use of electro-shock baton. With some help from a conscientious police officer, CAA received one of these torture tools. It could output 80 KV to 500 KV electricity when it is administered. *Let me demonstrate for you.* It can cause heart damage and skin burnt.

The DVD you will watch contains an interview with the family members of Ms. Jiang Zongxiu who was declared dead during her interrogation time within 24 hours of her arrest on June 18, 2004. She was arrested when she and her mother-in-law Ms. Tan Dewei was distributing some religious literatures in a market place in Tongzi county, Guizhou province. Today, her remains is still held in the funeral home and her 5 years old son is crying for justice to be done. So far no one in the government has taken any responsibility.

Secondly, I want to draw your attention to a Chinese government document we recently obtained through disheartened Chinese officials.

This document, entitled *"Education Campaign Action Plan Against Cults"* dated January 28, 2005, is a document by the Leadership Group on Preventing and Handling Cultic Issues [Issue No.1 (2005)] issued by of the Communist Party Committee, *Shayang County* and it is classified as a "secret document." Only 95 copies of this secret document were distributed.

Though it is only a regional document, it provides chilling and irrefutable evidence that the Chinese central government has intensified their campaign against all unregistered religious groups and their believers. This was done under the pretext of an anti "evil cult" campaign.

The document states that this new wave of campaign entitled "advocating Science, Caring for Family, Treasuring Life, Opposing Cults," was originated in 2004 "following the arrangement of the Central Committee of the Communist Party, the Communist Party Committee of Hubei Province, . . ." This campaign is being carried out, I quote, "in light of the directives from the Central Committee of the Communist Party. . . ." In order to fully "implement the No. 26 document issued by the General Office of the Central Committee of CPC in 2004, the No. 6 document issued by the 610 Office1 of Hubei Province in 2004."

The whole crackdown campaign is very comprehensive. It asks the “grass roots cadres, the masses, students, officials and employees of the Party and government agencies, enterprises, non-profit and non-governmental organizations”, and in every sectors of society, the document demands the campaign “be closely involved with the lives of masses and be carried out in person to villages, communities and households.”

For example, the document mandated that “during the first week of the spring semester a four-hour specific training on anti-cult education shall be given to leaders and teachers of all elementary and high schools throughout the county. By the end of March a four-hour lecture shall be conducted in every elementary and high school.”

Here I want to point particularly one requirement regarding the media report of this campaign. It says “while the anti-cult training and lectures are being conducted, names of other evil cults, except “Falun Gong,” shall not be publicized in any propaganda material, media or websites by any news agencies.” Why? One can reasonably conclude that the Chinese government know that these un-named unregistered religious groups including Protestant House churches and underground Catholic churches should not be cracked down in the first place and they want to mislead the whole world that as long as you are not a Falungong practitioners, you are safe. This is shameless. Besides of imprisoning hundreds of thousands of Falungong practitioners, as a result of this campaign, in Hubei alone, according to our record, at least three hundred of house church evangelists had to escape from their homes and two female evangelist were still missing.

Thirdly, I want to show you what kind of products made by thousands of prisoners in the labor camp. Here are some of them smuggled out China recently from Shayang Female Re-education through Camp and Wuhan No. 1 Female Prison respectively. Those prisoners have to work 12–18 hours a day in order to make these products such as Christmas lights and Olympic products and symbols for exportation purpose. This practice is another clear evidence of violation of international law.

With the 2008 Beijing Olympics approaching, I call upon the respective governments to encourage their business community to actively link their financial sponsorship and investments to China with the issue of religious freedom. Companies should be discouraged from investing in those provinces and cities with severe religious persecution and torture.

Ladies and gentlemen, almost 60 years ago the UN approved the Universal Declaration of Human Rights. Later a series of international human rights treaties were enacted with the mandate and mechanisms to protect the religious freedoms for all peoples of faith, to prevent prisoners from being tortured, and to investigate cases of arbitrary detention. The evidence we have presented, shows that the Chinese government, unfortunately and regrettably, is in violation of these international laws. I implore the Commission and call upon all member states within this Commission to voice concerns over these violations, and support formal investigation of these abuses so that the Chinese government will fulfill its obligations to abide by these international standards which bear its own signatures.

A WOMEN'S VOICE INTERNATIONAL

SPEAKER: XIQIU “BOB” FU

INTERVENTION: ITEM 11, RELIGIOUS INTOLERANCE—APRIL 5, 2005

Mr. Chairman, A Woman's Voice International (AWVI) would like to draw to the attention of this Commission the plight of three leaders of the Chinese house church movement who have experienced persecution at the hands of state authorities in the People's Republic of China: Cai Zhuohua, Gong Shengliang and Chen Jingmao.

Cai Zhuohua, Christian pastor from Beijing, was arrested September 11, 2004, by National Security operatives, for printing “illegal religious literature.” Cai's wife, Xiao Yunfei was also arrested November 27, 2004. This case, according to the Chinese Government newspaper, is labeled the most serious case of foreign religious infiltration since the founding of the People's Republic of China.

According to the China Aid Association, Cai's arrest was a directive from the highest level of the Communist Party, as expressed in a secret document released by a Woman's Voice International during a parallel session this past week. According to a recently released fellow inmate, Pastor Cai was repeatedly tortured by electric shocks and was forced to falsely confess, which could lead to a ten to fifteen year prison sentence under the current criminal code. The Chinese government has repeatedly threatened his attorney not to defend him.

AWVI believes this case will set a precedent for freedom of the press and freedom of religion in China and will help determine how the Chinese constitutional laws which are supposed to guarantee such freedoms are actually defined.

Gong Shengliang was sentenced to life in prison October 10, 2002, by the Court Hubei Province. He is now being held at Section Four, Te Yi Hao, Miaoshan Development Zone, Jiangxia District, Wuhan City, Hubei Province. This case involved the arrest and sentencing of many women of Pastor Gong's church who were tortured into falsely accusing Gong of rape.

According to eyewitness reports, Gong's mental and physical health has suffered due to the harsh treatment in prison. AWVI accepts the testimony that indicates Gong was framed, and considers the prospect of a life sentence, coupled with the other irregularities and abuses in this case, an outrage against justice.

Chen Jingmao, age 74, of Chongqing City, was sentenced October 10, 2002, to four years in prison for sending his granddaughter to a Bible class training school. Chen is now being held in Sanxia Prison, Chongqing City. He is reported to be in very poor health and will die in prison if he is not released soon.

Though China has amended its constitution to protect human rights, these three cases exemplify both the arbitrary nature of what passes for justice in the People's Republic of China and the sad state of religious freedom there. AWVI calls upon all Members of this Commission to urge China to release Gong Shengliang, Cai Zhuohua and Chen Jingmao without delay. We further ask the Commission to hold China accountable for upholding the freedoms of thought, conscience, religion and belief for all its citizens. Finally, we call upon the Commission to use all the tools at its disposal to convince China to cooperate with UN mechanisms and to desist from persecuting religious minorities.

LETTER FROM DEBORAH FIKES, EXECUTIVE DIRECTOR, MIDLAND MINISTERIAL ALLIANCE

DEBORAH FIKES, EXECUTIVE DIRECTOR,
MIDLAND MINISTERIAL ALLIANCE,
Midland, TX.

I accompanied Bob Fu to Geneva on March 27, 2005 through April 3rd for the United Nations Commission on Human Rights at the request of ministerial leaders and other interested parties in Midland and Washington, D.C. who have taken a personal interest in the increasing number of reports of religious persecution we are receiving from China. I attended the parallel session that Bob Fu participated in on March 30th where the electric baton was displayed as part of his presentation and I encouraged Bob to also display the electric baton at the plenary session scheduled for April 1st, but suggested that we consult with the appropriate UN office to make certain that such an exhibit was allowed and then also suggested that we speak personally with the security/screening guards before proceeding with including the baton as an exhibit in Bob's intervention.

On Friday, April 1st, Mr. Fu was advised that the plenary session was running behind schedule and indicated that the intervention would not be scheduled until the following week. This meant that I would not be in Geneva, due to plans that necessitated me leaving on April 3rd. It was important to me to insure that Mr. Fu had indeed received approval by the appropriate UN office that the electric baton could be used as an exhibit, which he and his assistant, Melissa Ramussen, did confirm when I inquired about this. Having received the approval of this UN office, the next step was to discuss our plans with UN security which I initiated explaining that I was leaving Geneva and I wanted to make sure that UN security was aware that an unusual device, the electric baton, would be taken into the plenary session, as a necessary part of Mr. Fu's intervention presentation. I approached a security guard dressed in a plain-clothes suit, not an officer's uniform. My perception was that this man was the head of security because he had seemed to be the person in charge of the plenary sessions I had attended earlier and he had done an excellent job, was very observant and kept people from standing and blocking the doorways.

On Friday, April 1st along with Mr. Fu, in the public setting of the Serpentine Lounge, this same security guard was walking by and I stopped him and gave him my business card and identified myself as being part of Mr. Fu's/A Woman's Voice International representatives and I proceeded to explain in detail that the electric baton, which I defined as a "torture device" that was necessary for Mr. Fu's to communicate in one of the cases he would present in the intervention, would need to be publicly taken in and displayed as part of the testimony of Pastor Cai's case. As the rest of our AWVI delegation looked on, the security guard took my business card and then gave Mr. Fu his own business card and wrote an additional phone

number on it indicating that if we had any problems to contact him. At this point, two other security guards walked up and witnessed the end of our discussion as the card was being given to Mr. Fu and I was shaking the security guard's hand and thanking him for his time and help. My impression was that all of the security guards were aware and understood, as we spoke to them in English, that we were clarifying that there were no restrictions on such a device being taken inside the plenary session if it was part of Mr. Fu's intervention presentation should it require additional screening. It was also my understanding, that Mr. Fu could indicate that he had cleared it with the security chief which is what we were under the impression that we did when we received this security guard's business card.? I was informed that the card was taken away from Mr. Fu after the Chinese delegation protested and demanded that Mr. Fu be removed from the premises. Mr. Fu telephoned me at my residence in Midland, Texas on April 5th at approximately 5:30 a.m. U.S. time, and asked if I would speak to the security guard whom had given us permission to take the electric baton into the plenary session. The security guard declined to speak with me over the phone.

I would like to apologize for any misunderstanding and clarify that the security guards we observed did an outstanding job and I personally saw them stop and look into bags and check badges the entire week I was at Geneva. They were extremely helpful and professional, going the extra mile to help not only our delegation, but others that we observed needing extra help with directions and assistance. It would be very disturbing to our community if these security guards are penalized in any way and the China delegation is enabled to use their influence in a manipulative manner due to their objections to this torture device being publicly entered as documentation of human rights abuses the UNCHR is commissioned to investigate.

I would also like to add that I personally have made multiple attempts to communicate and meet with the Chinese Embassy in WDC to discuss our concerns and privately present documentation, including this electric baton allegation, and I have never had a phone call returned , have had my mail marked refused and returned back to me and have also had the door shut in my face on two occasions when I paid a personal visit to the WDC embassy to try to avoid Mr. Fu testifying in a public venue as the UNCHR provides. As the hometown of President George W. Bush, our community wishes to encourage better relations with all countries and we strive to be gracious and privately communicate with countries like China in hopes of working together to devise a mutually beneficial solution to the current climate of religious repression there. The Chinese government is marginalizing and harming themselves by their lack of willingness to dialogue with leaders of the 120 million house church Christians who love their country and wish to be patriotic and offer social services the Chinese government is in need of at this time in their history. House church leaders, like Mr. Fu, have innovative ideas on registration requirements and honoring social order concerns of the Chinese government and unless the Chinese government reconsiders their refusal to dialogue on such issues, our community and alliance have no choice but to publicly communicate our concerns and fully support Mr. Bob Fu and other organizations who are increasingly receiving reports and documentation like the electric baton device to verify these disturbing accounts of human rights abuse and religions repression the top leaders in China are allowing to continue.

Respectfully submitted,

DEBORAH FIKES, *Executive Director,*
MIDLAND MINISTERIAL ALLIANCE.

Mr. SMITH. Mr. Fu, thank you so very much for your testimony.
Ambassador Williamson.

**STATEMENT OF THE HONORABLE RICHARD WILLIAMSON,
PARTNER, MAYER, BROWN, ROWE & MAW LLP**

Ambassador WILLIAMSON. Thank you, Chairman Smith. First let me thank you for having this hearing. I have submitted a written statement for the record.

I won't go through it all now, but let me as a point of personal privilege also express my gratitude to you for your trips to the U.N. Commission on Human Rights with others from the Committee last year in the session in 2004.

You were relentlessly hardworking and effective to help push a number of important issues, including questions on human rights

in China. I want to thank you for that and thank you for your work as well with the OSCE and other personal efforts you have made on human rights.

Human rights matter and that is something that, Mr. Chairman, you and your colleagues understand. Democracy is the best protection of human rights.

As President Bush has said, democracy is the surest way to build a society of justice. The best way to prevent corruption and abuse of power is to hold rulers accountable. The best way to ensure fairness to all is to establish the rule of law. The best way to honor human dignity is to protect human rights.

Or as John Stewart Mill wrote:

“The rights and interest of every or any person we secure from being disregarded, when the person is himself able and habitually disposed, to stand up for them. Human beings are only secure from evil at the hands of others in proportion as they have the power of being and are self-protecting.”

The U.N. has made significant contributions to human rights. For example, in its Charter it recognizes the human rights of mankind and makes repeated references to that. The Universal Declaration of Human Rights, which has been mentioned previously, drafted by a Committee chaired by Eleanor Roosevelt and on which John Forster Dallas served, has been a seminal document in establishing norms of decency and human rights.

I don't question the goals of the United Nations or its contribution, especially in establishing norms, but let me discuss briefly the U.N. Commission on Human Rights.

Last year we did succeed to get country-specific resolutions on North Korea, Cuba, Burma and Belarus. These are countries that trample the human rights of their own citizens, yet in areas such as Zimbabwe, which also has committed gross human rights abuses and most recently engaged in a rigged election, the Commission was unable to find the wherewithal to take action and pass a country-specific resolution.

It is in part because the Human Rights Commission has what I call the axis of repressors, repressive regimes that seek to serve on the Commission that work together and find allies, even among some who are not repressive regimes themselves, but because of either geographic pressure, other political considerations, or just a desire that they not be scrutinized too closely, will vote against country-specific resolutions.

Also at the Commission has been mentioned the disproportionate attention on the oldest democracy in the Middle East, Israel, is a distortion and often unfair, and is a platform where many countries seek to unfairly delegitimize Israel and fail to address balanced resolutions that acknowledge the security considerations that must be dealt with in the Middle East for progress in the Israel/Palestinian conflict.

You mentioned, Mr. Chairman, the situation in Darfur last year in the Commission, which I feel was truly scandalous—by that time there had been 30,000 people killed, nearly one million displaced. Secretary-General Kofi Annan traveled to Geneva in an attempt of remembrance of the genocide of Rwanda, identified the atrocities in

Sudan as ethnic cleansing. Nonetheless, in the end a resolution was unable to be passed. A Presidential statement was adopted that was anemic at best and was read properly in cartoon that much of the international community did not care about the abuses.

Here we are 1 year later. The 30,000 deaths have risen to 200,000. The 1,000,000 displaced has risen to 2,000,000 displaced. The rapes and branding of women have continued and we still sit here today with the Human Rights Commission debating whether or not to take robust action and the final disposition unclear.

These clearly represent serious problems in the Commission. I applaud Secretary-General Kofi Annan for trying to deal with some of these issues in proposing reforms to revitalize the U.N.

The High-level Panel recommendation of universality for the Commission, I fear, is ill-advised. If the U.N. Commission on Human Rights had universality, just as the General Assembly did, it would have the same effectiveness and authority of the General Assembly, which is to say not much at all. The Human Rights Council, which is proposed, deserves consideration. However, I am not optimistic that it would foreclose that pattern of regional group influence on selection.

I am not confident it will deal with the other systemic problems that the Commission has had. It will require serious work to try to develop the machinery to perfect this process.

Ultimately, the fact that democracies and non-democracies have equal status and the fact that oppressors, as well as those who respect human rights, have common status creates fundamental weaknesses in the U.N.'s ability to address some of these serious concerns, and I fear that a Human Rights Council will not prove to be a solution.

Finally, let me say that I think the democracy caucus offers a tremendous opportunity for the member states and for the U.N. I applaud Freedom House, Open Society and others who have championed this. Their progress has been at times glacial, but at least progress is being made for the democracy caucus to function.

The upcoming meeting in Santiago, Chile will contribute to this. My hope is that it will take robust form, both in New York and in other U.N. venues.

Until we move out of a mindset where regional groups have such a dominant role, the U.N.'s weaknesses will not be improved.

There is a saying that when we were children we played like children. Well, children pick their friends by their neighborhoods. As we grow older and wiser, we pick friends by those who share our values.

The countries that share democratic values should unite in the U.N. so it can reach its potential, both with its Charter, generally, and in the field of human rights.

Thank you, Mr. Chairman.

[The prepared statement of Ambassador Williamson follows:]

PREPARED STATEMENT OF THE HONORABLE RICHARD WILLIAMSON, PARTNER, MAYER, BROWN, ROWE & MAW LLP

I want to thank Sub-Committee Chairman, Congressman Christopher Smith, for inviting me to testify today on Human Rights and United Nations reform. The work

of this Congressional Committee is important and the topic of today's hearing deserves careful consideration. I hope that my observations can help you in your work.

Human rights matter. They are not values of convenience nor are they merely a fashion of the day. Human rights are inherent, self-evident and transcendent. They are fundamental to what it means to be a human being and working to protect human rights—every man, woman and child's basic human rights—is a noble cause and amongst the foremost responsibilities of government.

Human Rights

Human rights are grounded on the recognition that every human being has “inherent dignity and worth.” As Ronald Dworkin has written, “We almost all accept . . . that human life in all its forms is sacred . . . For some of us, this is a matter of religious faith, for others, of secular but deep philosophical belief.”¹ For me, it is part of my religious faith.² But whether the recognition that every human being is “inviolable” and has “inherent dignity” derives from religious faith or philosophical constructs, it compels certain fundamental moral limits on us individually and collectively. It demands that there are things that ought not be done to any human being. And there are things that ought to be done for any human being. Among other requirements, we have a responsibility to give voice to the voiceless victims of human rights abuse and stand for the values we cherish as best we can.³ No one and no society is faultless. Mistakes are made. But we have an obligation and an opportunity to strive to be faithful to our values and to act so as to project those values as best we are able under the circumstances.

Human rights are not the sole consideration of U.S. foreign policy nor should they be, but neither can human rights be irrelevant.⁴ Human rights are fundamental to who we are and human rights properly should animate our actions individually and

¹ Ronald Dworkin, “Life is Sacred: That’s the Easy Part,” *New York Times Magazine*, May 16, 1993, p. 36.

“America’s founders began with the premise that man had been created in the image of God and that all were of equal worth and endowed with unalienable rights. In founding the modern world’s first democracy, they set out to create a system that would follow this premise and that would suit human nature as they understood it.” Joshua Muravchik, *Exporting Democracy: Fulfilling America’s Destiny* (Washington, D.C.: The AEI Press; 1991), p. 1.

² “The essence of all morality is this: to believe that every human being is of infinite importance and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God.” R. H. Tawney, J. M. Winter and D. M. Joslin, eds., *R. H. Tawney’s Commonplace Book*, 67 (1972); as quoted in Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York, N.Y.: Oxford University Press, 1998), p. 11. Professor Perry’s volume provides an excellent exploration of whether the idea of Human Rights is ineliminably religious.

³ It is often stressed that the idea of human rights is of recent origin, and that this is enough to dismiss its claims to timeless validity. In its contemporary form, the doctrine is certainly new, though it is arguable that it is a modern version of the natural law theory, whose origins we can trace back at least to the Stoic philosophers and, of course, to the Judaic and Christian sources of European culture. There is no substantial difference between proclaiming “the right to life” and stating that natural law forbids killing. Much as the concept may have been elaborated in the philosophy of the Enlightenment in its conflict with Christianity, the notion of the immutable rights of individuals goes back to the Christian belief in the autonomous status and irreplaceable value of the human personality.” Leszek Kolakowski, *Modernity on Endless Trial*, 214 (1990), as quoted in Michael J. Perry, *ibid.*, p. 3. See also, Micheline R. Ishey, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, California: University of California Press; 2004).

⁴ For a powerful testament to the importance of giving voice to victims of human rights abuses voiceless in their own land see the book by former Soviet dissident Natan Sharansky, *ibid.* See also, Andrei Sakharov, *Memoirs* (New York, N.Y.; Alfred A. Knopf, 1990); and Robert F. Drinan, *The Mobilization of Shame: A World View of Human Rights* (New Haven, Connecticut; Yale University Press; 2001).

⁴ There is a considerable body of work examining United States efforts to execute an effective human rights policy. Sometimes U.S. foreign policy has been successful, sometimes it has not. See generally, Debra Liang-Fenton, ed., *Implementing U.S. Human Rights Policy* (Washington, D.C.: United States Institute of Peace Press; 2004); John Shattuck, *Freedom on Fire: Human Rights Wars and America’s Response* (Cambridge, Massachusetts: Harvard University Press; 2003); David P. Forsythe, *Human Rights and U.S. Foreign Policy: Congress Reconsidered* (Gainesville, Florida: University Presses of Florida; 1988); Julie A. Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy* (New York, N.Y.; Routledge, 2003); David A. Forsythe, *The United States and Human Rights: Looking Inward and Outward* (Lincoln, Nebraska: University of Nebraska Press, 2000); and Tony Evans, *U.S. Hegemony and the Project of Universal Human Rights* (New York, N.Y.; St. Martin’s Press; 1996). See also, Eliot Abrams, ed., *Honor Among Nations: Intangible Interests and Foreign Policy* (Washington, D.C.: Ethics and Policy Center; 1998). See also, Leslie H. Gelb and Justine A. Rosenthal, “The Rise of Ethics in Foreign Policy: Reaching a Values Consensus, *Foreign Affairs* (May/June 2003), Vol. 82, No. 3, pp. 2–7, in which the argue that “morality, values, ethics, universal principles,” recently have taken on greater centrality in U.S. foreign policy.

as a nation. Respecting human rights and defending those values are the right thing to do and it is in our self-interest to do so. Countries that respect human rights under the rule of law are more stable and more prosperous. Spreading democracy and liberty makes the world safer. Democratic nations are less likely to begin armed conflicts. And democratic nations create an environment of opportunity inhospitable to the frustration and fanaticism that breeds terrorists.

The recognition of the inherent dignity of all mankind leads to the acceptance of limits on what we can do. The idea of human rights as enshrined in the United Nations Universal Declaration on Human Rights and other international documents embraces this recognition and seeks to enumerate the rights of all human beings and prescribe the limits of acceptable behavior. And while a broad consensus may be achieved on the ideals contained in such documents, it is less easy to act in strict accordance with such guidelines. And it is harder still to act to condemn such violations and remedy injustices. Furthermore, whether the case be Rwanda, Bosnia, Kosovo or Darfur, man's capacity for inhumanity and terrible transgressions too frequently are revealed and the international community's willingness to act to stop such crimes against humanity too often is anemic.⁵

The American idea is grounded on principles of human rights. As former Secretary of State George Shultz once said, "What unifies us is not a common origin but a common set of ideals: freedom, constitutional democracy, racial and religious tolerance. We Americans thus define ourselves not by where we come from but by where we are headed: our goals, our values, our principles, which make the kind of society we strive to create."⁶

The concern for human rights is interwoven in the national experience and our beliefs as Americans. It is what has differentiated the United States from so many other nations in history. It is fundamental to our character and our values.

Ronald Reagan understood the transcending importance of the American idea, of values, and human rights. At the height of the Cold War when he had labeled the Soviet Union "an evil empire", President Reagan delivered an address at Westminster Hall, London, in which he said, "The ultimate determination in the struggle now going on for the world will not be bombs and rockets, but a test of wills and ideas—a trial of spiritual resolve: the values we hold and the beliefs we cherish, the ideals to which we are dedicated . . . the great civilized ideas: individual liberty, representative government, and the rules of law under God."⁷

We won the great struggle of the 20th century. Freedom and democracy prevailed over totalitarian communism.

But the struggle for freedom is not over. Brutal authoritarian states continue to enslave people around the world. Basic human rights and personal dignity continue to be denied. This is wrong. Furthermore, these harsh conditions can give root to the frustration and despair that breeds terrorists who lash out at the United States in desperate acts of violence.

Just enumerating the rights of man is not enough. We must act to advance them. It is our responsibility and our opportunity. As President Woodrow Wilson said 91

⁵Tragically, the failures of the international community to act forcefully to stop the genocide in Darfur is not the first such failure. For example, see Romeo Dallaire, *Shake Hands With The Devil: The Failure of Humanity in Rwanda* (Toronto, Canada; Random House Canada; 2003). See also, Linda Melvern, *A People Betrayed: The Role of The West in Rwanda's Genocide* (London; Zed Books, 2000); Samantha Powers, *A Problem from Hell: America and the Age of Genocide* (New York, N.Y.; Basic Books; 2002); Philip Gourevitch, *We Wish To Inform You That Tomorrow We Will Be Killed With Our Families: Stories from Rwanda* (London; Picador; 1999); Michael Barnett, *Eye witness to a Genocide: The U.N. and Rwanda* (Ithaca, N.Y.; Cornell University Press; 2002); and Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington, D.C.; Brookings Institute; 2001). Regarding the ethnic cleansing in Bosnia, see Thomas Cushman and Stjepan Mestrovic, eds., *This Time We Knew: Western Responses to Genocide in Bosnia* (New York, N.Y.; New York University Press; 1996).

⁶George P. Shultz, "Human Rights and the Moral Dimension of U.S. Foreign Policy," an address at the 86th Annual Washington Day Banquet at the Creve Coeur Club of Peoria, Illinois, February 22, 1984, published as Current Policy No. 551 by the United States Department of State Bureau of Public Affairs, Washington, D.C., 1984.

⁷Ronald Reagan, Address to the British Parliament, London, England, June 8, 1982. George P. Shultz, Secretary of State for most of the Reagan presidency stated in 1984, "[M]oral values and a commitment to human dignity have been not an appendage to our foreign policy but an essential part of it, and a powerful impulse driving it . . . There should be no doubt of President Reagan's approach—not isolation or guilt or paralysis but, on the contrary, a commitment to active engagement, confidently working for our values, as well as our interests in the real world, acting proudly as the champion of freedom." Shultz, *ibid*.

years ago, "Liberty does not consist in mere declaration of the rights of man. It consists in the translation of those declarations into definite actions."⁸

Democracy

Self-determination is a fundamental human right recognized in the Universal Declaration on Human Rights⁹ and by common sense. Furthermore, democracy is the best way to secure sustainable respect for human rights. It is a rampart against state encroachment on individual rights and liberties. As President Bush has said, "[D]emocracy is the surest way to build a society of justice. The best way to prevent corruption and abuse of power is to hold rulers accountable. The best way to insure fairness to all is to establish the rule of law. The best way to honor human dignity is to protect human rights."¹⁰

Democratic governments around the world do not have identical institutions nor procedures. The particularities will vary from place to place, adapting to history and culture.¹¹ But all true democracies share certain common characteristics.

Democracy is more than the mechanics of popular elections. A democratic process includes effective participation, equality of voting, an effective opportunity to learn about the alternatives about which one is voting, an open agenda and universal suffrage.¹² Democracy depends on freedom of expression, civil society and the right to dissent.¹³ Democracy helps to prevent government by abusive autocracies.¹⁴ Rights are essential building blocks of a democratic process of government so a system of rights are inherent in democratic institutions. Freedoms and opportunities are required for a government to be democratic. Democracy helps people to protect their own interests.¹⁵

⁸ Woodrow Wilson, Address, July 4, 1914.

⁹ For an excellent examination of the difficult process of drafting the Universal Declaration of Human Rights, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, N.Y.; Random House; 2001).

¹⁰ Remarks by President George W. Bush, Istanbul, Turkey, June 29, 2004.

¹¹ See, generally, Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, Conn.; Yale University Press; 1999). See also Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, eds., *Democracy in Developing Countries: Asia* (Boulder, Colo.; Lynne Rienner; 1989); Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, eds., *Democracy in Developing Countries: Latin America* (Boulder, Colo.; Lynne Rienner; 1989); Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, eds., *Democracy in Developing Countries: Africa* (Boulder, Colo.; Lynne Rienner; 1988); Jorge I. Dominguez and Abraham F. Lowenthal, eds., *Constructing Democratic Governance: Mexico, Central America, and the Caribbean in the 1990's* (Baltimore, Md.; John Hopkins University Press; 1996); David Beetham, ed., *Defining and Measuring Democracy* (London, U.K.; Sage Publishers; 1994); Alex Inkeles, ed., (New Brunswick, N.J.; Transaction Press; 1991); and Tatu Vanhanen, *The Process of Democratization: A Comparative Study of 147 States* (New York, N.Y.; Crane Russak; 1990).

¹² See, Robert A. Dahl, *On Democracy* (New Haven, Conn.; Yale University Press; 1998), p. 37–43. As Fared Zakaria has written, "[D]emocracy means liberal democracy: a political system marked not only by free and fair elections but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property . . . [it] is not about the procedures for selecting government but, rather, government's goals. It refers to the tradition . . . that seeks to protect an individual's autonomy and dignity against coercion, whatever the source—state, church, or society . . . It places the rule of law at the center of politics. Fared Zakaria, *The Future of Freedom* (New York, N.Y.; W.W. Norton and Co.; 2003), p. 17 and 19.

¹³ See, Seymour Martin Lipset and Jason M. Larkin, *The Democratic Century* (Norman, Oklahoma; University of Oklahoma Press, 2004) in which a lively comparative analysis of democracy is presented including "how institutions that constitute democracy interact with one another, how political parties develop in new democracies, (and) why the quality of civil societies matters more than the mere existence of civil associations."

See also, Morton H. Halperin, "Democracy and Human Rights: An Argument for Convergence," in Samantha Power and Graham Allison, *Realizing Human Rights: Moving From Inspiration to Impact* (New York, N.Y.; St. Martin's Press; 2000), pp. 249–263.

¹⁴ "We believe that the rights of individuals are most effectively promoted and expanded by and through democratic political institutions—where governments are elected through periodic competitive elections, elections that feature freedom to criticize government, to publish criticisms, to organize opposition and compete for power. Human rights violations may occur even in such systems, but they are relatively few and readily corrected." Jeane J. Kirkpatrick, *Legitimacy and Force: Political and Moral Dimensions* (New Brunswick, N.J.; Transaction Books, 1988), p. 85.

¹⁵ "There are, however, essential principles common to every successful society, in every culture. Successful societies limit the power of the state and the power of the military—so that governments respond to the will of the people, and not the will of an elite. Successful societies protect freedom with the consistent and impartial rule of law, instead of selecting applying the law to punish political opponents. Successful societies allow room for healthy civic institutions—for political parties and labor unions and independent newspapers and broadcast media. Successful societies guarantee religious liberty—the right to serve and honor God without fear of persecution. Successful societies privatize their economies, and secure the rights of property.

As John Stuart Mill wrote, “[T]he rights and interests of every or any person we secure from being disregarded when the person is himself able, and habitually disposed, to stand up for them . . . Human beings are only secure from evil at the hands of others in proportion as they have the power of being, and are, self-protecting.”¹⁶ Or, as Dr. Kirkpatrick has said, “The reason that popular governments protect human rights best is that people do not impose tyrants upon themselves. Tyrants impose themselves upon people.”¹⁷

If one can participate in determining one’s government through a democratic process, you can protect one’s interests and rights from abuse by government. Democratic governments give people the opportunity to live under laws of their own choosing. Democratic government provides the opportunity for exercising moral responsibility. Democracy allows human development. Democratic government fosters greater political equality.

The march of freedom is indivisible from the advance of human rights.¹⁸ The spread of democracy is part of the promotion and sustainability of human rights. The spread of democracy deserves our support; it requires our assistance. Our good faith should be buttressed by our actions. As President George W. Bush has said, “The progress of liberty is a powerful trend. Yet, we also know that liberty, if not defended, can be lost. The success of freedom is not determined by some dialectic of history. By definition, the success of freedom rests upon the choices and the courage of free people.”¹⁹

The United Nations

The United Nations has made important contributions to human rights. The horrors of World War II spurred the world community to advance human rights. Among other things, from the ashes of war the United States led the world community to found the United Nations. The U.N. Charter embraces two overriding goals, “to save succeeding generations from the scourge of war” and “to reaffirm faith in fundamental human rights.”²⁰ The words “promoting and encouraging respect for human rights and fundamental freedoms” appear, with slight variations, throughout the U.N. Charter.

As Secretary of State George Marshall observed in remarks before the opening session of the United Nations General Assembly in Paris in 1948, “Systematic and deliberate denials of basic human rights lie at the root of most of our trouble and threaten the work of the United Nations. It is not only fundamentally wrong that millions of men and women live in daily terror of secret police, subject to seizure, imprisonment or forced labor without just cause and without fair trial, but these wrongs have repercussions in the community of nations. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field.”²¹

But how the general human rights rhetoric in the U.N. Charter might be translated into action was far from clear.

They prohibit and punish official corruption, and invest in the health and education of their people. They recognize the rights of women. And instead of directing hatred and resentment against others, successful societies appeal to the hopes of their own people. “President George W. Bush, Freedom in Iraq and Middle East, Remarks at the 20th Anniversary of the National Endowment for Democracy, United States Chamber of Commerce, Washington, D.C., November 6, 2003.

¹⁶ John Stuart Mill, *Considerations of Representative Government* (1861) (New York, N.Y.; Liberal Arts Press; 1958), p. 55.

¹⁷ Jeanne J. Kirkpatrick, *ibid.*, p. 85.

¹⁸ While there are some who question whether all people in all cultures seek freedom and can embrace and sustain democracy, the march of freedom in Indonesia, Georgia, Afghanistan and Ukraine suggest otherwise. For a thoughtful exploration of this issue see, Michael Novak, *The Universal Hunger For Liberty: Why the Crash of Civilizations Is Not Inevitable* (New York, N.Y.; Basic Books; 2004). And for an interesting exploration of whether the recent wave of democracy can be sustained, see Larry Diamond and Marc F. Plattner, eds., *The Global Resurgence of Democracy* (Second Edition), (Baltimore, Md.; John Hopkins University Press; 1996).

¹⁹ President George W. Bush, Address to the National Endowment for Democracy, Washington, D.C., November 6, 2003.

²⁰ Footnote 24/The Universal Declaration of Human Rights.

²¹ U.S. Department of State, *Bulletin*, Vol. 19, October 3, 1948), p. 932. For an excellent history of the deliberations and politics of the founding of the U.N., see Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (Boulder, Colorado; Westview Press; 2003). “The importance of that war (World War II) resulted in the widespread conviction that effective international protection of human rights was one of the essential conditions of international peace and progress, and this conviction was set out in a number of statements, declarations and proposals made while the war was still being fought.” *The United Nations and Human Rights*, (New York, New York; United Nations, 1984), p. 1.

The seminal document in the United Nations pertaining to human rights is the Universal Declaration of Human Rights that was adopted in 1948. The difficult and painstakingly drafting took place in 1947 and 1948.²²

Eleanor Roosevelt chaired the drafting committee.²³

The Declaration has a preamble and 30 articles that set forth the human rights and fundamental freedoms to which everyone, everywhere in the world, is entitled. The strongest terms of the Declaration faithfully embrace the values and civil liberties contained in our own Declaration of Independence and Constitution.

While not perfect, the U.N. Universal Declaration of Human Rights was the product of hard work well done. It established important norms on human rights, proclaimed them universal, and called upon all nations to honor and protect them. While not the final resolution of human rights abuses, as William Schulz, Executive Director of Amnesty International USA has written, "The mere articulation of such rights and their near universal acclamation was a formidable achievement."²⁴

THE DECLARATION'S IMPACT

Quite properly, many people point out that the world falls short of attaining the Declaration's high aspirations. In fact, in some parts of the world these basic human rights are trampled daily and the people brutalized. Critics charge that these facts not only reveal the hypocrisy and corruption of the United Nations and many of its member states, but also expose the U.N. Universal Declaration of Human Rights as a hollow and meaningless document. I disagree.

As Professor Mary Ann Glendon points out in her excellent book, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*:

[T]he State Department explained the U.S. view of the Declaration's nature and purpose by referring to what Abraham Lincoln had said about the assertion of human equality in the Declaration of Independence:

'They (the drafters) did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. Indeed they had no power to confer such a boon. They meant simply to declare the right so that the enforcement of it might follow as fast as circumstances should permit.

'They meant to set up a standard maxim for free society which should be familiar to all: constantly looked to, constantly labored for, and thereby spreading and deepening its influence and augmenting the happiness and value of life to all people, of all colors, everywhere.²⁵

Similarly, prior to the adoption of the U.N. Declaration of Human Rights, Eleanor Roosevelt wrote.

In the first place, we have put into words some inherent rights. Beyond that, we have found that the conditions of our contemporary world require the enumeration of certain protections which the individual must have if he is to acquire a sense of security and dignity in his own person. The effect of this is frankly educational. Indeed, I like to think that the Declaration will help forward very largely the education of the people of the world.²⁶

As the U.N. General Assembly neared its final vote on the Declaration, Eleanor Roosevelt as Chairman of the Commission on Human Rights said,

In giving our approval to the declaration today, it is of primary importance to keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General

²²Cuba and Panama introduced proposals for the preparation of a bill of rights at the first U.N. General Assembly in 1945. In the end the General Assembly transmitted the Panamanian proposal to the Economic and Social Council for consideration by the Commission on Human Rights.

²³Among the other able public figures on the committee were Peng-chun Chang, a Chinese philosopher and playwright, Rene Cassin, a French Resistance leader, Charles Malik, a Lebanese philosopher, and Carlos Romulo, a Philippine who had won a Pulitzer Prize in 1941. Other nations represented on the drafting committee were Australia, Chile, the Soviet Union and the United Kingdom.

²⁴William F. Schulz, *In Our Own Best Interest: How Defending Human Rights Benefits Us All* (Boston Massachusetts; Beacon Press; 2001), p. 4.

²⁵Mary Ann Glendon, *ibid.*, p. 236.

²⁶*Ibid.*

Assembly by formed votes of its members, and to save as a common standard of achievement for all people of all nations.²⁷

Indeed, "Eleanor Roosevelt expressly campaigned for United States support by arguing that the Declaration would not be legally binding."²⁸ It stood as a document of basic enumerated rights that's power was in its moral persuasion publicly exercised. It outlined a "common standard of achievement" to which to aspire and it has become the cornerstone of today's international human rights regime. It is the yardstick by which all country's respect for, and compliance with, international human rights standards are measured.

As former Congressman, Father Robert Drinan has written, "The establishment of a catalog of internationally recognized human rights for the first time in the history of the world is a monumental achievement in itself, apart from the enforceability of such rights."²⁹

Today the principles set forth in the Declaration have inculcated the modern world; its culture and its politics. No U.N. action before or since has had as profound an effect on contemporary thinking and the lives of as many people throughout the world. As U.N. Secretary General Kofi Annan has written, "The end of the Cold War, the World Conference on Human Rights in Vienna in 1993, and the inception of the United Nations High Commissioner for Human Rights later that year have opened up new avenues for the United Nations to make its work in human rights more meaningful to people throughout the world." But the foundation for that effort is the U.N. Universal Declaration on Human Rights and the principles therein embraced.

The U.N. Commission on Human Rights

Unfortunately, the United Nations Commission on Human Rights often has failed to effectively advance human rights and often has failed to give voice to human rights victims voiceless in their own land. The deteriorating situation is cause for grave concern.

Earlier this month in an address to the U.N. Commission on Human Rights, Secretary-General Kofi Annan stated, "[O]ur responsibility under the Charter is clear: we must do more to promote and protect fundamental rights and freedoms. . . . [U]nless we re-make our human rights machinery, we may be unable to renew public confidence in the United Nations."³⁰

Last year I served as Ambassador and United States Representative to the U.N. Commission on Human Rights in Geneva. It was an enlightening, if not uplifting, experience. While we successfully pursued resolutions bringing to account the repressive regimes that are denying human rights in North Korea, Cuba, and Burma; we failed to pass important resolutions on the oppressive human rights situation in Zimbabwe, China and elsewhere. It was disheartening to our delegation. It was devastating for those many victims who are denied their inherent human rights in their own lands. It demonstrated structural weaknesses and failures of the Commission on Human Rights. And, unfortunately, it was business as usual at the Commission.

The fact is that repressive regimes seek seats in the 53 member U.N. Commission on Human Rights in order to protect themselves. For example, among the members of the 2005 Commission now sitting in Geneva are such human rights abusers as Cuba, Sudan and Zimbabwe. They form an axis of the repressors, who bind together to try to protect one another. They seek out other delegations concerned about what would be revealed by scrutiny of their own human rights records. They form a powerful bloc within the UNCHR that effectively stops efforts to "name and shame" many repressive regimes. As a senior European diplomat said, "Countries don't want to be named. They want to protect their interests, so they band together."³¹

The United States Ambassador to the U.N. in Geneva, Kevin Moley, an effective diplomat with whom I've had the pleasure of working, is quoted as having said, "The inmates are very close to being in charge of the asylum."³²

Unfortunately, this group of repressive regimes often receives support even from some of our European friends, who hold human rights in high regard. But they are hesitant to call out abusers. *New York Times* reporter Richard Bernstein reports,

²⁷ U.S. Department of State, *Bulletin*, Vol. 19 (December 19, 1948), p. 751.

²⁸ Howard Tolley, Jr., *ibid.*, p. 23.

²⁹ Robert F. Drinan, S.J., *ibid.*, p. ix.

³⁰ Secretary-General Kofi Annan, Address to the U.N. Commission on Human Rights, Geneva, Switzerland, April 7, 2005. See also, Mark Turner, "U.N. Overhaul: Annan Confronts Human Rights Commission With Call to Disband and Reform," *Financial Times*, April 8, 2005.

³¹ Richard Bernstein, "Are the Foxes Guarding Human Rights at U.N.?" *International Herald Tribune*, April 1, 2005.

³² *Ibid.*

"[T]he view is that the U.S. eagerness for what the Europeans call 'name and shame' resolutions might be psychologically satisfying, but they don't bring human rights improvements."³³ I disagree.

The collapse of the Soviet empire and the rush to freedom of central and eastern Europe was instructive on many fronts. Among the lessons we should have learned is that many dissidents behind the Iron Curtain took comfort and subsidence from public expressions by the West that they knew injustices were being committed under communism, they condemned them, and they called for them to end. It was a critical contribution to sustaining the flame of freedom even in the darkest days of Soviet denial and tyranny. As Natan Sharansky has stated, "During my long journey through the world of evil, I had discovered three sources of power: the power of an individual's inner freedom, the power of a free society, and the power of the solidarity of the free world."³⁴ The free world must stand in solidarity for the values that underpin our just societies. And we must give voice to the human rights victims voiceless in their own lands. That is our responsibility and our opportunity.

The failure of the U.N. Commission on Human Rights to rebuke repressive regimes gives aid and comfort to the repressors. It breaks faith with human rights champions who confront considerable, sometimes unimaginable, hardships at home. It tarnishes the values to which we claim to subscribe. And it diminishes those institutions entrusted to advance human rights, among them the United Nations Commission on Human Rights.

Also, as in earlier years, last spring the Commission on Human Rights was exploited by some in their relentless campaign to delegitimize Israel, the oldest democracy in the Middle East. While all other country specific concerns are lumped together under UNCHER agenda item 9, Israel is singled out with its own, separate agenda item. The excessive, invective rhetoric assaulting Israel is numbing. The one-sided resolutions are scandalous. No nation is blameless. All countries should be vigilant to improve their own human rights records. But the singling out of Israel in this manner reveals more about the double standards and abuse within the U.N. system than it does about alleged human rights failures by the state of Israel.

A further very troubling development last year in the U.N. Commission on Human Rights was the failure of member states to pass a robust resolution on the situation in Darfur. Today the situation in Sudan is the worst humanitarian crisis in the world. Last spring the ethnic cleansing was well underway, and was well known. Nonetheless, the members of the UNCHR lacked the will to condemn the atrocities.

By last spring President Bush had spoken out loudly and clearly, calling on the Sudanese Government to stop the atrocities in Darfur. It was known that a pattern of planned and willful mass slaughter and forced displacement was taking place. The Sudan Government had armed the Arab militias known as Janjaweed. They had coordinated attacks on black villages, killing males from young boys to old men, raping and branding women, killing livestock, burning huts and driving black Africans from their homes. At the time an estimated 30,000 already had been killed and nearly a million people had been displaced.

Nonetheless, the Commission on Human Rights member states, including Europeans, went along with a weak "President's Statement" on the situation in Darfur. Not surprisingly, Khartoum took this as a signal that the international community did not care much about the atrocities. So they continued. Today estimates are that 200,000 have been killed and nearly 2 million people have been driven from their homes. President Bush quite properly has called the atrocities in Darfur genocide.

Many question the value of a Commission on Human Rights that lacks the resolve to condemn ethnic cleansing. A crisis of confidence has developed. What can be done?

Next Steps

Secretary-General Kofi Annan has said, "Human rights are the core of the United Nations' identity. Men and women everywhere expect us to uphold universal ideals. They need us to be their ally and protector. They want to believe we can help unmask bigotry and defend the rights of the weak and voiceless. . . . But the gap between what we seem to promise, and what we actually deliver, has grown. The answer is not to draw back from an ambitious human rights agenda, but to make the improvements that will enable our machinery to live up to the world's expectations."³⁵

³³*Ibid.*

³⁴Natan Sharansky, *The Case for Democracy: The Power of Freedom to Overcome Tyranny and Terror* (New York, N.Y.; Public Affairs, 2004), p. xi.

³⁵Kofi Annan, *ibid.*

The Secretary-General convened a High Level Panel to consider the entire spectrum of United Nations activities and offer reform proposals. The High Level Panel made many recommendations that warrant careful consideration such as a useful definition of terrorism and support for a democracy fund. However, the Panel's suggestion to "universalize" the UNCHR is ill-advised. If the UNCHR were to enlarge to all 191 U.N. member states it would have the same composition as the U.N. General Assembly. I suspect it would then have all the effectiveness and credibility of the General Assembly, which is to say, not much at all.

Secretary-General Annan drew from the High Level Panel's report in crafting his own reform proposals in his report, "In Larger Freedom Towards Development, Security and Human Rights for All." The Secretary-General recommends replacing the Commission of 53 members with a smaller Human Rights Council of 19 members. Rather than meeting for six weeks each year in the spring, he suggests the new Human Rights Council be a standing body. Rather than selection through the regional blocs with a General Assembly ratification by a simple majority, the Secretary-General proposes members to the new Council be limited to countries with solid human rights records and be elected by a two-thirds majority of the General Assembly. This proposed Human Rights Council would review periodically the human rights record of every nation. And the Council would be available to convene on short notice to deal with urgent crisis or gross violations of human rights.

Among the intents of the Secretary-General's proposals is to limit or even eliminate repressive regimes from membership on the Human Rights Council. This is a proper goal. However, given the influence of regional blocs, the political give and take, and general horse trading in the U.N., I am skeptical that this objective will be realized.

Also having served as Ambassador to the United Nations for Special Political Affairs, I have sat through more Security Council meetings than I care to remember. This venue also was designed to meet only as required. Yet in a generation, its meeting frequency has grown from a couple of dozen times a year to over 200 sessions each year. Most are mind-numbingly routine, formalistic and, too often, of marginal value. I foresee this possibility for the proposed Human Rights Council.

The United Nations, its membership, structures and procedures has many purposes. It is an institution that in many ways is very useful to the United States, our values and interests. But it also has challenges. Among them is that while the right to "self-determination" is recognized in the U.N. Charter and the Universal Declaration on Human Rights, many U.N. members are not democracies even in form, let alone in actual practice. Consequently, many U.N. member states do not recognize, let alone practice a form of government that respects the fundamental rights of their people. Nonetheless, undemocratic states have equal standing in the United Nations with those that, while imperfect, nonetheless have vibrant democracies, strong rule of law, and real human rights protections.

That does not mean that we should not engage the United Nations in the area of human rights. We should. But it does mean that we engage the U.N. with our eyes open. We work the issues. And we recognize that while we constantly should seek to improve "U.N. machinery" in the area of human rights and elsewhere, that it will remain an imperfect venue.

The United Nations provides a platform for repressive regimes to have equal standing with the free. It provides venues for oppressors to advance their interests just as it does for those of us that embrace human rights and seek to spread freedom. It is an intensely political arena in which the United States must work tirelessly to champion the values we cherish and to advance the cause of freedom. But, unfortunately, at this time when too many authoritarian and brutal governments sit at the U.N. table, whatever the machinery and whatever the procedures, there will continue to be fundamental clashes in the U.N. on human rights. We should accept this challenge. The victims of human rights abuse are counting on us. And we know that our cause is just and it will prevail.

Mr. SMITH. Mr. Ambassador, thank you very much for your testimony and for your on-going leadership with the OSCE, the work that you are doing on the eminent persons, but also for leading the delegation last year.

Again, I thought you were aggressive, focused and your frustration with Darfur was very evident in your work. You tried very hard to bring some additional focus on that on-going abuse. Thank you for that.

Mr. Loconte, please proceed.

**STATEMENT OF MR. JOSEPH LOCONTE, WILLIAM E. SIMON
FELLOW IN RELIGION AND A FREE SOCIETY, THE HERITAGE
FOUNDATION**

Mr. LOCONTE. Thank you, Mr. Chairman and distinguished Members of the Committee. Thank you for the privilege of testifying at today's hearing.

It is a regrettable, yet widely recognized fact, I think, that repressive governments now seek membership on the Human Rights Commission to escape scrutiny and censure. And the result is that the annual deliberations in Geneva trivialize the worst violations of human dignity and politicize what should be the collective moral judgment of civilized states.

Two weeks ago in Geneva, as we heard earlier today, U.N. Secretary-General Kofi Annan told delegates to the Commission that their work had become dangerously compromised:

"We have reached a point," he said, "at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole and where piecemeal reforms will not be enough."

Unfortunately, the Secretary-General's proposed reform of the Commission—that it become a permanent standing body elected by two-thirds majority of the General Assembly—is exactly the kind of piecemeal measure he warns against.

Let me briefly explain why I believe this is the case and then try to chart our way forward. First, there will be no agreement about criteria for membership on a new Human Rights Council.

The General Assembly, a 191-member body consisting of barely 88 full free nations, barely 88, could not be counted on to thwart the election of rogue regimes. Indeed, it is quite conceivable that the United States would not be elected to a new Human Rights Council.

Second, power politics will continue to discredit the council's human rights agenda. Powerful nations will still bribe or bully reluctant governments. We will continue to see the discriminatory focus on Israel.

Third, no human rights body embedded in the United Nations could overcome the moral confusion crippling the human rights regimes in Geneva and New York.

One of the unfortunate results, I am afraid, of the dominance of the non-aligned movement in the U.N. system is the elevation of social and economic rights, as important as they are, at the expense of civil and political rights.

It is hard to describe. For those of you who have never been to Geneva, it is hard to describe the spectacle there of advocacy groups functioning as fronts for despotic governments, allowed to consume the Commission's attention with frivolous, misleading or false human rights accusations.

Some recommendations: The task of defending and promoting basic human rights must be reserved for the world's democracies, not sidelined by its despots. That is the animating principle here. That is the paradigm shift I want to suggest we have. All of my recommendations really flow out of that fundamental principle. That linkage between democracies and human rights promotion.

First, Congress should agree with the U.N. Secretary-General that the U.N. Human Rights Commission must be abolished, for the reasons that have been suggested.

Second, Congress should reject any U.N. proposal to reconstitute a human rights body whose membership would be determined by a General Assembly vote. When it comes to human rights, the GA's political and ideological diversity is a source of a weakness, not strength.

Third, Congress should appoint an independent human rights commissioner to head a new U.S. commission on human rights. He would head a permanent and independent advisory body that would meet regularly throughout the year and in special session as needed.

The U.S. Commission on Human Rights could be modeled on the U.S. Commission on International Religious Freedom, an independent body that monitors religious freedom abroad and makes recommendations to the President, the Secretary of State and to Congress.

Fourth, the U.S. Commission on Human Rights, this new U.S. Commission I am proposing, must focus its efforts on genocide prevention and the prevention of gross human rights abuses, not being distracted by economic and social rights.

Fifth, Congress should promote a democracy caucus, dedicated to extending and protecting human rights and democratic freedoms. The proposed U.S. human rights commissioner should take the lead by encouraging, for example, other governments in the existing democracy caucus to establish their own human rights commissioners and advisory bodies.

Sixth, Congress should strengthen the work of the U.N. High Commissioner for Human Rights and the Office of the Special Advisor on the Prevention of Genocide. Human rights advocates typically complain that the Commissioner lacks a serious field presence in many trouble spots around the world.

Congress should insist that the High Commissioner concentrate exclusively on the most serious human rights abuses and have the authority to report directly to the U.N. Security Council, which only rarely happens now.

Congress should support increased funding for the newly created U.N. Special Advisor on the Prevention of Genocide. His position should be full-time. Right now it is only half-time and he has two full-time staffers.

Seventh and last, Congress should strengthen the role of non-governmental organizations committed to exposing gross human rights abuses and protecting individuals at risk.

To date, the greatest pressure for effective action to halt the violence in Darfur, apart from, I think, the leadership of the United States, has come from the institutions of civil society, mainly independent human rights organizations, not from any U.N. officers, agencies or commissions.

The proposed U.S. Commission on Human Rights should establish an official liaison with NGOs, based on the record of working effectively in trouble spots around the world.

Mr. Chairman, it is true that the original Commission on Human Rights set a high standard with its Universal Declaration of

Human Rights, but let us not forget why the original Commission got off to such a strong start. The single most important reason was the prestige and moral suasion of the United States. Recall the words of Charles Malik, the Lebanese delegate to the Commission, an Arab Christian and a drafter of the Universal Declaration of Human Rights.

Listen to Dr. Malik reflecting on his experience in America:

“The American spirit of freedom, tolerance, largeness of heart and profound respect for individual human beings permeated and suffused our atmosphere all around,” he recalled.

“It was an intangible thing, but a most real thing all the same. . . . I cannot imagine a document on human rights and fundamental freedoms . . . arising in our age without the sustaining support of this spiritual background. I cannot imagine the declaration coming to birth under the aegis of any other culture emerging dominant after the Second World War.”

If we want to extend and defend the cause of human rights, we should turn to those democracies animated by that same spirit of freedom, tolerance, largeness of heart and respect for individual human beings, beginning with the United States.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Loconte follows:]

PREPARED STATEMENT OF MR. JOSEPH LOCONTE, WILLIAM E. SIMON FELLOW IN
RELIGION AND A FREE SOCIETY, THE HERITAGE FOUNDATION

My name is Joseph Loconte. I'm the William E. Simon Fellow in Religion and a Free Society at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Mr. Chairman and distinguished Members of the House International Relations Subcommittee on Africa, Global Human Rights and International Operations. Thank you for the privilege of testifying at today's hearing on a vital international issue: our collective commitment to protect human rights.

With a profound sense of regret, I suspect that some members of this Subcommittee have come to believe that the United Nations body most responsible for spotlighting human rights abuses, the Commission on Human Rights, no longer effectively advances the cause of human rights.¹ And, indeed, it is a regrettable, yet widely recognized fact: Repressive governments seek membership on the Commission to escape scrutiny and censure.² The result is that the annual deliberations in Geneva trivialize the worst violations of human dignity and politicize what should be the collective moral judgment of civilized states.

Two years ago, for example, a newspaper headline in Khartoum, Sudan declared that the regime's “human rights file was closed forever.” It came on the heels of a vote by the Commission on Human Rights to remove Sudan from a list of countries requiring special monitoring.³ The Commission reached the nadir of its corruption last year, however, when the Sudanese government—repeatedly accused of gross human rights abuses in Darfur—was re-elected as a Commission member in good

¹ The 2004 Report of the Secretary-General's High Level Panel on Threats, Challenges and Change made this astonishing admission: “We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”

² According to a 2005 Freedom House ranking, of the 53 nations that are members of the UN Commission on Human Rights, at least 14 states, or 26 percent of the total, are not free. Six states on the Commission—China, Cuba, Eritrea Saudi Arabia, Sudan, and Zimbabwe—received the worst numerical rating for freedom.

³ The Khartoum paper was cited in an April 18, 2003 editorial in the *Washington Post*. The *Post* went on to argue: “If the commission is going to continue to act against the interests of the world's weak and persecuted, we ought not to lend it any further credibility.”

standing.⁴ Two weeks ago in Geneva, UN Secretary-General Kofi Annan told delegates to the Commission that their work had become dangerously compromised. “We have reached a point,” he said, “at which the commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole and where piecemeal reforms will not be enough.”⁵

Unfortunately, the Secretary-General’s proposed reform of the Commission—that it become a permanent standing body elected by a two-thirds majority of the General Assembly—is exactly the kind of piecemeal measure he warns against. It will not prevent the nomination of oppressive states to the Commission. It will not produce UN resolutions that consistently name and shame the most egregious human-rights violators. In short, it will not help those who are caught in the grip of brutal regimes or renegade militias.

Let me briefly explain why I believe this is the case, and then try to chart a way forward.

First, there will be no agreement about criteria for membership on a new UN Human Rights Council.

Earlier this year, the European Parliament passed a resolution calling on its member states to “request” that candidates for membership on the Commission on Human Rights must have ratified “core human rights treaties” and “complied with their reporting obligations.”⁶ Under his reform plan unveiled in March 2005, the Secretary-General urges that “those elected to the Council should undertake to abide by the highest human rights standards.”⁷ These are aspirations without a concrete means of becoming a reality. UN experts I’ve spoken with don’t believe it’s possible to impose any meaningful criteria for membership (except, perhaps, a rule barring states under Security Council sanction). Even if the “regional bloc” system of voting is abolished—another big if—powerful nations would still bribe or bully reluctant governments for their support. Moreover, regional thinking has become deeply ingrained in UN member states and would not be easily overturned. Super-majority votes by the General Assembly—a 191-member body consisting of barely 88 fully free nations—could not be counted on to thwart the election of rogue regimes. Indeed, it is quite conceivable that the United States would not be elected to a new Human Rights Council.⁸

Second, power politics will continue to discredit the council’s human rights agenda.

By giving non-democratic states equal voting power with democracies, the UN system assures that the cause of human rights will be grossly manipulated. Third World governments, for example, have little incentive to push democratic ideals at the expense of economic interests or their regional or non-aligned identity. This helps explain why even African democracies refused in 2004 to strongly condemn ethnic cleansing in Darfur, Sudan. It is why others defer to China when Beijing maneuvers to block resolutions criticizing its own policies of political and religious repression. Even some European governments seem less interested in promoting human rights than they are in promoting the European Union to offset American power.⁹ The Secretary General’s bid to let the General Assembly determine Commission membership will not change this corrupted dynamic. We already know how that body deals with human rights atrocities—it’s called the Third Committee of the General Assembly, the same Committee that voted last November to take “no action” on behalf of the victims of Darfur. “It is hard to change the ethos of a limited membership body that has become crudely political,” writes Ruth Wedgwood, professor of International Law and Diplomacy at Johns Hopkins University. “One may wonder whether the United Nations might gain more traction offering technical as-

⁴The most recent UN report on the violence in Darfur, its Commissions of Inquiry report, was released February 1, 2005. It declined to label the killings as “genocide,” but agreed that atrocities have taken place on a widespread and systematic basis.

⁵“In Larger Freedom: Towards Development, Security and Human Rights For All,” Report of the Secretary-General, United Nations General Assembly, March 21, 2005.

⁶European Parliament Resolution on the EU’s Priorities and Recommendations for the 61st Session of the UN Commission on Human Rights in Geneva, February 24, 2005, no.34.

⁷“In Larger Freedom: Towards Development, Security and Human Rights For All,” Report of the Secretary-General, United Nations General Assembly, March 21, 2005.

⁸About 115 nations make up the Non-Aligned Movement, making it nearly a two-thirds bloc within the United Nations. Among the non-aligned states, the 22-nation Arab League forms a decisive coalition within the 56-nation Islamic Conference.

⁹This is the conclusion of UN specialists such as Joshua Muravchik of the American Enterprise Institute, pointing to the French proposal that the Bosnian crisis be addressed by the Western European Union (a paper organization), rather than by NATO. See Joshua Muravchik, “The UN on the Loose,” *Commentary*, July-August, 2002.

sistance to countries that want to change . . . rather than hosting a high-tempered shouting match each year.”¹⁰

Third, no human rights body embedded in the United Nations could overcome the moral confusion crippling the human rights regimes in Geneva and New York.

One of the unfortunate results of the dominance of Non-Aligned Movement in the UN system is the elevation of social and economic rights at the expense of civil and political rights. It is hard to describe the spectacle in Geneva of advocacy groups, many functioning as fronts for despotic governments, which are allowed to consume the Commission’s attention with frivolous, misleading, or false human-rights accusations. In addition, decades of duplicity, vote trading, and a lack of accountability have created a culture of indifference toward the most serious human rights abusers. In 2002, for example, Syria was elected to a non-permanent seat on the UN Security Council, despite being on the US State Department list of governments supporting terrorism. That same year, Libya was elected to chair the Commission on Human Rights by a vote of 33 to 3—a decision defended by Shashi Tharoor, UN undersecretary-general for communications and public information. “You don’t advance human rights by preaching only to the converted,” he said.¹¹

Though well intentioned, this mindset of accommodation undermines the very concept of transcendent moral norms enshrined in the Universal Declaration of Human Rights. It fails to realize that human rights are not advanced by giving repressive governments voting privileges and a microphone at the United Nations. It is no wonder that neither the Commission nor the General Assembly, for example, can agree on a morally coherent definition of terrorism. Thus we’ve seen the Commission pass countless resolutions criticizing Israel for its treatment of Palestinians—but not a single resolution condemning Palestinian terrorist assaults against Israeli civilians.¹² “The discriminatory focus on Israel detracts from the ability of the Commission to effectively address other important matters within its mandate,” according to a recent American Bar Association report on UN reform, “and diminishes its credibility as a global human rights policymaking body.”¹³

RECOMMENDATIONS: A REFORMATION IN HUMAN RIGHTS PROTECTION

All of this suggests the need to completely rethink our commitment to human rights in the context of the United Nations. The Secretary-General’s report insists on a new resolve to protect those whose rights are being threatened. “Human rights must be incorporated into decision-making and discussion throughout the work of the Organization,” the report says.¹⁴ At the same time, the SG declares his intention to promote the spread of democracy through a UN democracy fund. “The right to choose how they are ruled, and who rules them, must be the birthright of all people,” he says, “and its universal achievement must be a central objective of an Organization devoted to the cause of larger freedom.”¹⁵ Nowhere, however, does the SG explicitly make human rights protection the unique responsibility of democratic governments. Yet it is democracies, with all their faults, that have the best record of defending human rights. It is democracies that make the right to life and liberty, the freedom of religion, of speech, of association their bedrock guarantees.

The task of defending and promoting basic human rights must be reserved for the world’s democracies—not sidelined by its despots. The failure of various UN agencies and organizations—which are always a mix of free and un-free nations—makes this conclusion unavoidable. The UN’s ethos of cooperation and multiculturalism, though useful in other contexts, is completely incompatible with the goal of exposing human rights abusers and protecting innocent people.

It now seems clear that much of the task of identifying and working to prevent genocide and gross human rights abuses must occur outside of the United Nations.

First, Congress should agree with the UN Secretary-General that the UN Human Rights Commission must be abolished.

The original Commission, led by Eleanor Roosevelt and dominated by world-renowned defenders of human rights, was able to produce the Universal Declaration

¹⁰ Ruth Wedgwood, “The Evident Virtues (and Vices) of the United Nations,” undated.

¹¹ Joseph Loconte, “Human Rights and Wrongs,” *The Weekly Standard*, March 22, 2004.

¹² About 30 percent of all Commission resolutions ever adopted condemning specific states are directed at Israel. See Ann Bayefsky, “Undiplomatic Imbalance: The Anti-Semitism of the UN is a Problem for More Than Just Israel,” *National Review Online*, December 13, 2004.

¹³ American Bar Association, Section of International Law’s Task Force on Reform of the United Nations Commission on Human Rights, February 23, 2005.

¹⁴ “In Larger Freedom: Towards Development, Security and Human Rights For All,” Report of the Secretary-General, United Nations General Assembly, March 21, 2005, p.37.

¹⁵ Ibid., p.38.

of Human Rights. Not so today. The Commission's lamentable record of human-rights hypocrisy, its corrupted system of member states, its stubborn resistance to real reform—these and other factors make it essential that the Commission be abolished. As the Secretary-General has noted, its failure is tarnishing the reputation of the entire United Nations.

Second, Congress should reject any UN proposal to reconstitute a human rights body whose membership would be determined by a General Assembly vote.

The UN General Assembly has demonstrated that it cannot achieve moral clarity on the most fundamental of questions. Whether the issue is anti-Semitism, the definition of terrorism, the virtues of democracy, the reality of genocide—the General Assembly cannot reach consensus.¹⁶ When it comes to human rights, its political and ideological diversity is a source of weakness, not strength. It cannot be a major player in achieving the UN's stated goal of exposing human rights abusers and protecting innocent people.

Third, Congress should appoint an independent Human Rights Commissioner to head a new US Commission on Human Rights.

A US human rights commissioner, drawn either from government or the private sector, would have a clear record as a champion of basic political and civil liberties. He would head a permanent and independent advisory body that would meet regularly throughout the year and in special session as needed. The US Commission on Human Rights could be modeled on the US Commission on International Religious Freedom (USCIRF), an independent body that monitors religious freedom abroad and makes policy recommendations to the President, Secretary of State, and Congress. Like the USCIRF, the new US Commission on Human Rights would draw on a diverse pool of experts in human rights issues.

Fourth, the US Commission on Human Rights must focus its efforts on genocide prevention and the prevention of gross human rights abuses.

The mission of the US Human Rights Commissioner and that of the Commission must be clearly defined in order to focus attention on the most serious violations of basic political and civil liberties—such as those contained in articles 3,4,5,6, and 9 in the Universal Declaration of Human Rights (including the right to life, freedom from slavery, protection against arbitrary arrest, torture, or rape). The Commissioner should work closely with relevant non-governmental organizations, secular and religious, in identifying the most troublesome situations around the world. He should be given direct access to the UN High Commissioner for Human Rights and the UN Special Advisor on Genocide.

Fifth, Congress should promote a “Democracy Caucus” dedicated to extending and protecting human rights and democratic freedoms.

Congress approved legislation in December 2004 to establish a Democracy Caucus within the United Nations. Its membership is to be drawn from the Community of Democracies, founded in 2000 at an international conference in Warsaw. It's unclear, however, whether the Democracy Caucus will be limited to fully free and democratic governments and how aggressively it will challenge human rights abusers.¹⁷ The proposed US Human Rights Commissioner should take the lead in building alliances with democratic states committed to upholding the highest standards and protections for human rights. He could begin by encouraging other governments in the existing Democracy Caucus to establish human rights commissioners and advisory bodies.

Sixth, Congress should strengthen the work of the UN High Commissioner for Human Rights and the Office of the Special Adviser on the Prevention of Genocide.

The High Commissioner is the principal UN official responsible for human rights, and is accountable to the Secretary-General. Yet his office is not nearly as effective as it could be: Human rights advocates complain that the Commissioner lacks a se-

¹⁶ The UN's 2001 conference against racism in Durban turned into such a tirade against Israel that Secretary of State Colin Powell withdrew the US delegation. In addition, although the UN Security Council condemned the 2004 terrorist assault by Chechen separatists at a school in Beslan, the United Nations has yet to define terrorism or produce a comprehensive convention condemning it.

¹⁷ An international coalition of human rights and pro-democracy organizations sent a letter on March 17, 2005 to “Foreign Ministers of the Community of Democracy Convening Group,” urging the UN Democracy Caucus to insist that some of the world's worst violations be “fully aired, examined, and forthrightly censured” at the 61st session of the UN Commission on Human Rights in Geneva.

rious field presence in many trouble spots around the world. Moreover, the Commissioner rarely appears before the Security Council to report on country-specific situations. Although the 2004 High-Level Panel Report recommends that the High Commissioner prepare an annual report on the human-rights situation worldwide, his office lacks the resources for that task. Last year the UN established the Office of the Special Adviser on the Prevention of Genocide. The Special Adviser's task is to collect information on "massive and serious violations of human rights" and act as an early-warning mechanism to the Secretary-General. Yet his office also lacks resources, having only a half-time director and two staff.

Congress should insist that the High Commissioner concentrate exclusively on the most serious human rights abuses and have the authority to report directly to the UN Security Council. Congress should support increased funding for the UN Special Advisor on the Prevention of Genocide. His position should be full-time, and he also should have authority to report directly to the Security Council. UN human-rights offices should work closely together and meet regularly with the proposed US Human Rights Commissioner and his counterparts in other democratic nations.

Seventh, Congress should strengthen the role of non-governmental organizations (NGOs) committed to exposing gross human rights abuses and protecting individuals at risk.

To date, the greatest pressure for effective action to halt the violence in Darfur has come from the institutions of civil society—namely, independent human-rights organizations—not from any UN officers, agencies, or commissions.¹⁸ NGOs increasingly serve as the eyes and ears of the international community when it comes to human rights abuses. Those groups devoted to monitoring abuses dispatch field officers around the globe and file detailed reports. Others, especially faith-based organizations, focus on delivering humanitarian assistance to refugees or other at-risk populations. Because of their religious commitment to helping those in greatest need, they often become aware of violent or potentially violent situations long before UN investigators.¹⁹

A UN report released in June 2004 argued that "effective engagement with civil society and other constituencies is no longer an option—it is a necessity in order for the United Nations to meet its objectives and remain relevant in the twenty-first century."²⁰ Whether or not UN leaders heed that advice, the United States should take the lead in building strong bridges between its human rights apparatus and civil society organizations in the trenches of human-rights crises. Because of the politicized nature of UN organizations (such as the Commission on Human Rights and the Third Committee), reputable NGOs may be denied access or find their voice drowned out by the process.²¹ In contrast, the proposed US Commission on Human Rights should establish an official liaison with NGOs, based on a record of working effectively in trouble spots around the world.

CONCLUSION

Mr. Chairman, I appreciate the fact that some of my recommendations will appear too bold to some members of this Subcommittee and to others who wish to see the United Nations take the lead role in defending human rights. It's true that the original Commission on Human Rights set a high standard with its Universal Declaration of Human Rights—a document that has inspired scores of treaties, conventions, and human rights organizations.

But let's not forget why the original Commission got off to such a strong start. The single most important reason was the prestige and moral suasion of the United

¹⁸ See, for example, a September 24, 2004 letter sent by executive directors of several NGOs to members of the UN Security Council. In it, they criticize UN Resolution 1564, adopted on September 18, 2004, because it "does not contain adequate measures to bring security to civilian populations in Darfur . . . The Security Council should act immediately under Chapter VII of the UN Charter to pass a resolution endorsing a significantly increased presence of AU personnel on the ground and providing them with a mandate to protect civilians." To date, the UN Security Council has failed to act upon the letter's recommendations.

¹⁹ Various human rights and humanitarian groups have been engaged in Sudan, including: the International Crisis Group, Doctors Without Borders, Freedom House, Human Rights Watch, and World Vision. A trade association of about 165 NGOs, InterAction.org, maintains basic standards of professionalism.

²⁰ "We the Peoples: Civil Society, the United Nations and Global Governance," Report of the Panel of Eminent Persons on United Nations-Civil Society Relations," June 11, 2004.

²¹ Ibid, p52. The report admits that the accreditation process for NGOs has drifted away from the concept of merit and become too politicized: ". . . since the United Nations is the global institution that embodies the values of free expression and assembly, it is inappropriate that . . . government surmises about political motives should determine who has access."

States. Recall the words of Charles Malik, the Lebanese delegate to the Commission, a drafter of the Universal Declaration of Human Rights. Malik was an Arab Christian and an intellectual powerhouse who went on to serve as president of the Economic and Social Council and Chairman of the Third Committee.

"The American spirit of freedom, tolerance, largeness of heart, and profound respect for individual human beings permeated and suffused our atmosphere all around," he recalled. "It was an intangible thing, but a most real thing all the same. We imbibed this spirit . . . above all in dealing with and talking to American men and women of every stripe and on every social level.

"I cannot imagine a document on human rights and fundamental freedoms of the importance and breadth of our declaration arising in our age without the sustaining support of this spiritual background. I cannot imagine the declaration coming to birth under the aegis of any other culture emerging dominant after the Second World War."²²

If we want to extend and defend the cause of human rights, if we hope to protect those most vulnerable to persecution and violence, we should turn to those democracies animated by that same spirit of freedom, tolerance, largeness of heart and profound respect for individual human beings—beginning with the United States.

Thank you Mr. Chairman.

Mr. SMITH. Mr. Loconte, thank you very much for your several recommendations to the Committee and to the Congress. They will all be looked at very carefully and I do thank you for that.

Ms. Windsor.

STATEMENT OF MS. JENNIFER L. WINDSOR, EXECUTIVE DIRECTOR, FREEDOM HOUSE

Ms. WINDSOR. Thank you very much. I ask permission for my full statement to be included in the record.

Mr. SMITH. Without objection, your full statement and that of all of our witnesses will be made a part of the record.

Ms. WINDSOR. Freedom House welcomes the opportunity to testify today on human rights and the United Nations. It was Eleanor Roosevelt, who was a Freedom House leader in our early years, who as a member of the original U.N. Human Rights Commission chaired the committee that drafted the Universal Declaration.

Eleanor Roosevelt and her colleagues achieved great things in 1947. Sadly, those achievements stand in sharp contrast to the deplorable record of the Human Rights Commission today.

We believe that at the core of the Commission's failure is the ability of a coalition of dictatorships and tyrannies to influence the Commission's agenda and thwart positive action.

Of the 53 members of the Commission, 15 or almost 30 percent are considered "Not Free" by Freedom House, which means that they are characterized by a systematic suppression of democratic rights and massive violations of human rights.

Indeed, among the Commission's members, six—China, Cuba, Eritrea, Saudi Arabia, Sudan and Zimbabwe—are among the world's most repressive regimes and we produce this book each year on the worst of the worst at Geneva.

As we know from the 2003 Commission session, one of the world's worst regimes, Libya, can even be Chair of the Commission.

Each year these countries band together effectively to protect themselves and each other from criticism of the Commission. All these facts have resulted in a crisis of legitimacy for the institution

²² Habib C. Malik, ed., *The Challenge of Human Rights: Charles Malik and the Universal Declaration* (Oxford: Charles Malik Foundation in association with The Centre for Lebanese Studies, 2000), p.238-39.

and the discrediting of the United Nations in the eyes of the United States public, human rights organizations, not to speak of victims of persecution by the very regimes that escape censure.

The crisis of the Commission was described in great detail by the High-level Panel. Unfortunately, its recommended solution to make all countries at the UNGA members of the Human Rights Commission we believe would be a disaster.

We believe the proposal made by the Secretary-General on the other hand merits support, as it opens the door at least to potential improvements in the system.

We endorse this proposal to replace the Commission with a new smaller Human Rights Council and to establish a voting mechanism that would enable the full U.N. General Assembly membership to approve candidacies by a two-thirds margin.

The two-thirds requirement, although it is not guaranteed, could help prevent the usual ratification of choices presented by regional blocks, because a regional block's candidate would need to win votes from a sizable majority of member states from other regions.

This would represent an important improvement. For while free societies now represent half of the U.N. membership, and elected democratic governments now represented 118 of the members, they are concentrated overwhelmingly in two regional groups.

The Secretary-General noted the importance of setting criteria for membership of the council. We would urge the setting of minimum standards for eligibility, as well as standards for disqualification.

At a minimum, those standards should be the exclusion of any country currently under U.N. Security Council sanction. A second standard should be the exclusion of any state that denies entry to or blocks the reporting of U.N. rapporteurs.

Ideally, Freedom House would support the inclusion of additional criteria drawn from the Community of Democracies process as well.

Most of my comments thus far have been directed at the reform of the Human Rights Commission. I want to add a few notes on the role of ECOSOC.

The membership of ECOSOC has also been problematic because of the role that they have played in determining the membership of the Human Rights Commission. The Secretary-General's proposal would remove that role, but the NGO Committee of ECOSOC would still determine accreditation and decertification of NGOs within the U.N. system.

Some of the most repressive regimes have succeeded in being elected to this NGO Committee and have used their seat to block NGOs from accreditation or to launch long-term investigations against select groups, including my own, with the aim of stripping them of U.N. accreditation.

The Secretary-General's recommendations regarding ECOSOC do not address these points explicitly, but we hope that as reforms are considered that this issue is addressed.

Specifically, we urge democracies at ECOSOC to consider revising the governing resolution related to the accreditation of NGOs, which is 1996/31, to be able to give NGOs better protection against these spurious attacks.

But no matter what reforms are suggested in which body, the rights-monitoring effort will not work unless the democracies at the United Nations find common cause.

The best mechanism for doing so is the emerging, but still weak, U.N. Democracy Caucus, which is comprised of invitees to the Community of Democracies meetings.

The U.N. democracy caucus is not a unified group yet, as we see from the reluctance of strong and admirable democracies like India and South Africa, to endorse country-specific resolutions that would target some of the world's worst rights violators.

It also currently operates under the principle of consensus among its members and to be effective, it needs to adopt rules that would enable it to act on the basis of a super-majority.

The United States should make it a priority of coming to agreement with the European Union, the countries of the British Commonwealth, with the OAS and with new democracies on strengthening the U.N. democracy caucus.

Moreover, we urge the members of the convening group and other COD members to ensure that the reforms of the U.N. Human Rights Commission be discussed and that the Secretary-General's plan is endorsed at the upcoming meeting in Santiago at the end of this month.

Clearly, coordination and cooperation among the democracies are absolutely vital to ensuring that the ambitious reforms proposed by the Secretary-General become a reality in the near future.

The future credibility of the United Nations on human rights depends on our working together to make that happen.

Thank you very much.

[The prepared statement of Ms. Windsor follows:]

PREPARED STATEMENT OF MS. JENNIFER L. WINDSOR, EXECUTIVE DIRECTOR,
FREEDOM HOUSE

Mr. Chairman:

Freedom House welcomes the opportunity to testify on the proposed reforms to the human rights mechanism of the United Nations. Freedom House was established in 1941 for the specific purpose of mobilizing the domestic public for the fight against fascist totalitarianism. We, like others, invested great hopes in the United Nations as an institution that would not simply contribute to world peace, but would work towards the spread of the rights and freedoms that are essential to a peaceful environment.

It was Eleanor Roosevelt, a Freedom House leader in our early years, who, as a member of the original UN Human Rights Commission, chaired the committee that drafted the Universal Declaration of Human Rights. When Mrs. Roosevelt described the Declaration as "a Magna Carta for mankind everywhere," she was, as well, expressing the hope that the United Nations itself would vigorously promote the spread of freedom around the world. Her optimism may have been provoked by her ability to build a consensus around the Universal Declaration, even in the face of an obstructionist Soviet Union and differences over the rights of asylum seekers, freedom of marriage partner, religious freedom, and other contentious issues.

Eleanor Roosevelt and her colleagues on the Human Rights Commission achieved great things in 1947. The Commission also left an important legacy in elaborating human rights norms which are now embodied in international treaty law. Sadly, those achievements stand in sharp contrast to the deplorable record of the Human Rights Commission today.

As we speak, the annual session of the Human Rights Commission in Geneva is drawing to a close. And once again, as in recent years, the Commission has failed to take action against the most egregious violators of universal human rights standards.

To be sure, the Commission did manage to issue watered down condemnations of three of the worst violators: North Korea, Belarus, and Cuba. This was regarded as

evidence of modest progress. At the same time, attempts to condemn the records of Sudan and Zimbabwe have so far failed, and the United States decided in advance not to introduce a resolution condemning China's record.

There are a number of reasons for the Commission's failures. At the core, however, is the ability of a coalition of dictatorships and tyrannies to influence the Commission's agenda and thwart positive action. This negative coalition has but one objective: to block, impede, and obstruct attempts to deal with on the ground violation of rights—including the persecution of minorities, the repression of religious believers, man-made famine and genocide.

Each year, Freedom House publishes an index that measures the state of freedom throughout the world. We assess and rate countries as to their degree of political rights and civil liberties. The findings of our survey are relevant to the debate over the Commission.

Thus, of the 53 member states of the commission, 14, or slightly over one-quarter, are among the countries Freedom House ranks as Not Free, meaning a systematic suppression of democratic rights and massive violations of human rights. Another 17 countries are ranked as Partly Free, in which some democratic freedoms prevail. By contrast, 22 countries, or 42 percent of the membership, have attained a Freedom House designation as Free. As I will describe later in my testimony, the democracies that together comprise a plurality of the Commission's membership, fail to work together as a cohesive bloc, unlike their fewer, yet disproportionately more powerful, non-democratic counterparts.

Among the 14 Not Free countries, six are given the lowest rankings possible and are among the world's most repressive regimes—the worst of the worst, according to Freedom House. They include China, Cuba, Eritrea, Saudi Arabia, Sudan, and Zimbabwe. Another country on the Commission, Nepal, recently suspended its elected parliament and declared what amounts to a state of martial law. And as we all know from the 2003 Commission session, one of the world's worst regimes—Libya—can even be Chair of the Commission.

All these facts have resulted in a crisis of legitimacy for the institution and in the discrediting of the United Nations in the eyes of the US public, international public opinion, human rights organizations, and democracy groups, not to speak of victims of persecution around the world.

The crisis of the commission was described in great detail by the High Level Panel. Unfortunately, its recommended solution—to make all countries at the UN General Assembly members of the Human Rights Commission—would be a disaster. We believe that the proposal made by Secretary General Kofi Annan, on the other hand, merits support, as it opens the door to potential improvements in the system. The Secretary General has suggested replacing the Commission with a new—smaller—Human Rights Council which would elevate the topic of human rights to the level of the Security Council and the Economic and Social Council. He has proposed a voting mechanism that would enable the full UN General Assembly membership to approve candidacies by a two-thirds margin. This is an important safeguard against letting the worst of the worst on to the new Human Rights Council. Such a vote, he has made clear, would allow states to examine candidacies in the light of some criteria of membership.

The two-thirds requirement would help prevent the usual ratification of choices presented by regional blocs because a regional bloc's candidate would need to win votes from a sizable majority of member states from other regions. This would represent an important improvement. For while free societies now represent nearly half the UN membership and elected democratic governments (as tracked by Freedom House) now numbers 118, they are concentrated overwhelmingly in the Western and Other Group and in the Americas Group.

Adopting the two-thirds vote requirement, therefore, improves the chances for better choices and lessens the prospects for favor-trading and getting along with neighboring states whatever their rights record—a practice that is common today. But it does not guarantee that outcome. Regional groupings could still decide to put candidates forward, although presumably those recommendations could be blocked by the democracies at the General Assembly level.

Thus, while the call for reform deserves unqualified support, as does the effort to submit the vote to the broad UN membership, other specifics of how the reform is to be implemented will need to be addressed to ensure the Secretary General's intention—to create a body that is genuinely committed to addressing violations of human rights—is actually realized.

Having observed the UN rights system at close hand, we feel we are well qualified to offer some suggestions. Among the factors that the U.S. and other democracies should seek to include are the following:

- a) The setting of minimum standards for eligibility and setting standards for disqualification. At a minimum these standards should be the exclusion of any country currently under UN Security Council sanction. A second standard should be the exclusion of any state that denies entry to and/or blocks the reporting of UN rapporteurs. Ideally, Freedom House would support the inclusion of additional criteria drawn from the Warsaw Declaration and the Seoul Plan of Action from the Community of Democracies process, which the Secretary General referenced in his report.
- b) Ensure that while there is a regional balance in the membership of the new Human Rights Council that the vote on specific candidacies be made by the full UN membership.
- c) Eliminate the evasive parliamentary maneuver of “no action” motions, thus ensuring that all filed resolutions that are put to a vote are voted up or down on the merits.
- d) Move the new Council to UN headquarters, which would permit smaller countries (including small, island countries) where democracy as a rule prevails to serve on the new HR Council.

There are other issues that frankly are more difficult to assess, but deserve serious discussion. Although an exact number of states on the Council has not been proposed, a reduction of the number would set up a far more competitive process, with many countries potentially competing for a lesser number of places.

Most of my comments thus far have been directed at the reform of the Human Rights Commission. However, the Secretary General has also proposed a number of reforms to ECOSOC. In the past, the membership of ECOSOC has also been problematic because of the role that ECOSOC has played in determining the membership of the Human Rights Commission. If the Secretary's proposed reforms are undertaken and elections to a new Human Rights Council occur through a vote of the full UN membership, then ECOSOC will assume a lesser importance in the area of political rights and civil liberties. But ECOSOC will continue to have importance for pro-democracy and rights groups because of the role of ECOSOC Committee on non-governmental organizations, the body that determines accreditation and de-certification of non-governmental organizations within the United Nations system.

In the last decade, some of the most repressive regimes have lobbied and succeeded in being elected to the ECOSOC Committee on NGOs, which frankly is regarded as a backwater by many of the democracies. As a result, authoritarian governments have used the NGO committee to block legitimate NGOs concerned with basic rights issues from accreditation. The dictatorships on the ECOSOC Committee on NGOs also have launched long-term investigations and sought sanctions against a broad array of NGOs, with the aim of suspending them, sanctioning them, or stripping them of UN accreditation. Such groups as Freedom House, the Transnational Radical Party—global libertarian NGO led among others by the European Union's former Humanitarian Affairs Commissioner—and Reporters without Borders, all have been subject to these challenges in recent years.

This is another area of potential engagement for the Democracy Caucus. ECOSOC's membership includes several democracies and they should be encouraging and supporting one another's candidacies for membership on the NGO Committee, as well as on ECOSOC, just as they should for the CHR (so long as it exists). They should also make clear to the NGO Committee that protracted investigations of rights-related NGOs will not be tolerated, if only because of the inordinate amount of time and resources expended by the Committee to review and air complaints, often at the cost of addressing their other agenda items.

The Secretary General's recommendations regarding ECOSOC do not address these points explicitly, but we hope that as reforms are considered that this at times antagonistic tendency by the ECOSOC Committee on NGOs is counteracted. We are pleased that the Secretary General, in fact, has reaffirmed the importance of NGO engagement with the new Human Rights Council.

Finally, we support the Secretary General's call for increased support and relevance of the High Commissioner's office, including involvement in the deliberations of the Security Council.

But no matter what reforms are suggested in which body, the rights monitoring efforts will not work unless the democracies at the UN find common cause. The best mechanism for common cause is the emerging—but weak—UN Democracy Caucus, which in itself is an outgrowth of the Community of Democracies.

The US should make a priority of coming to agreement with European Union, the countries of the British Commonwealth, and with the OAS on strengthening the UN Democracy Caucus.

There are problems even within the UN Democracy Caucus. Several strong and admirable democracies like India and South Africa, for example, are loath to endorse country-specific resolutions that would target some of the world's worst rights violators.

The UN Democracy Caucus operates under the principle of consensus among its members, which are the states invited to participate in the Community of Democracies process. The 10 members of the Coordinating Group, which includes the U.S., Chile (the current chair) Mexico, Portugal, South Korea, Czech Republic, Poland, Mali, South Africa, and India also operate by consensus. To be effective, it needs to adopt rules that would enable them to act on the basis of a super-majority.

The discussion of reform of the UN rights commission, therefore, needs to be seized upon by the UN Democracy Caucus and its parent, the Community of Democracies, which is meeting in Santiago April 28-30th at the Foreign Minister level, with Secretary of State Condoleezza Rice heading the U.S. delegation.

The Santiago Ministerial Meeting is an ideal opportunity for the democratic states to agree on common positions regarding the Secretary General's recommendations. There is also an opportunity to change the rules regarding what constitutes consensus on rights related issues within the UN Democracy Caucus.

If this can be done both at Santiago and in the months leading up to September's General Assembly session, we can stand on the threshold of a new, more effective era in human rights monitoring and support for democracy at the UN.

But with all due respect for the Secretary General and his excellent proposals, none of his suggested reforms will work unless there is coordination and cooperation among the democracies and countries on the path to democracy, which represent a latent but unrealized force at the UN.

Thank you again for the opportunity to present our views on this important topic.

Mr. SMITH. Thank you very much, Ms. Windsor, for your testimony and the extraordinarily good work that Freedom House does on a whole host of issues.

I do have a couple of questions. Mr. Fu, I would like to ask you first, if I could. In your view, how common is torture in the People's Republic of China?

If you could, what special needs, physical and psychological, have you and others who have been tortured face as a result of that mistreatment?

Mr. FU. This electric shock baton, this type of torture device, is very widely used. Usually when the people that I know, those people of conscience and who are arrested because of their practice of their freedom of religious belief, after they were arrested, the first thing the interrogator will give them—they call it the first lesson—is by administering and applying this device to force them to make whatever confessions they want them to make.

Just to take an example of Ms. Liu Xianzhi, that she shared her testimony with the U.N. and she is now residing in Midland, Texas. In 2001, when she was arrested from the first night, she started receiving this torture of this electric shock baton and the interrogators not only just shock her face or her head, but all over body, including her private parts.

When she was taking off her clothes by the interrogators and she was crying and shouting, then the interrogator put this electric baton into her mouth and her mouth was full of blisters and she couldn't eat for 3 days and she passed out and was sent to the police hospital.

This is very common and the amount of psychological, physical damage could be very severe and I knew some of them who were tortured, not only by one electric baton like this, it was up to eight simultaneously into the body.

I personally met one lady who is a house church evangelist because of that torture, her burns were sort of damaged and her

memory was losing and of course the physical damage is very obvious for some scars are still there.

So this is one of the cruelest device that is being used now today all over. Almost all over the Chinese gulag, Laogai camps and the interrogation rooms.

Mr. SMITH. Let me just ask, Ms. Windsor, you mentioned that there should be minimum standards for eligibility for membership and standards for disqualification for membership in the human rights body.

You mentioned U.N. Security Council sanction and any state that does not allow rapporteurs to visit the intended destination.

My question is: Is that it? Do all of you agree? I know that, Mr. Loconte, you have concerns and if others might want to touch on that on the General Assembly and the two-thirds vote.

I am not sure how such a body could be constituted, if there isn't a vote by some body. General Assembly would seem to be the one group. Maybe two-thirds is too high, too low of a bar, but the question of standards, that seems to me to be the most vexing of all.

How do you keep a Cuba, which is notorious in its abuse and in its disallowance of any visit? When mention was made earlier about contact with the rapporteur to Guantanamo, which I would love to see, but to give a further amplification or insight into the real situation, the ICRC has had access and has had, I think, very, very significant access to the detainees in Guantanamo. No such access has been afforded just a few miles away in Havannah and elsewhere where these people are being held.

This idea of minimum standards I think all of us need to promote. I notice in looking at Freedom House's analysis as to whether they are "Free," "Partially Free" or "Not Free," half of those that are on the Commission, roughly half, are either "Not Free" or "Partially Free," which presents real problems as to who is sitting in judgment.

Countries that several of our witnesses, including many of you, have said you know try to frustrate the efforts of real human rights activism with regards to the Commission. That is why they go on there in the first place.

Minimum standards, if you could.

Ms. WINDSOR. Yes. I was trying to be realistic. As part of this coalition of non-governmental organizations pushing for the U.N. democracy caucus, we have had lots of discussion about this and I know it is a complicated issue.

I think to push for no standards at all doesn't make any sense, because it doesn't tether the decisionmaking process. The ones that I mention in my testimony are the ones that I think get the broadest sense of agreement.

One of the things that came up all the time in our discussions is whether this would affect the United States, but I think that if we would try to eliminate all the resolutions, because we wouldn't want the United States to have to comply with them, you wouldn't have very many standards and it actually, I think, wouldn't look good.

I welcome the fact that the Administration has made an effort to meet with the special rapporteur on torture and I think that is a good first step.

On the issue of additional standards, one of the things that I wanted to articulate is that the Community of Democracies does have over 100 countries invited to it. While they have standards, these standards are blocking out some of the worst of the worst, but they are not saying that countries that are "Partially Free" that are continuing to have violations, but that at least show a commitment toward moving forward could not be included and I think realistically, while we would want to have an ideal council of the best performers, I would be willing to say that at least at a minimum you need to have some basic respect and block off the countries that we designate to be "Not Free."

Mr. LOCONTE. Yes, very quickly. A study done by the American Bar Association, they spent the better part of last year talking to human rights specialists, U.N. specialists, interviewed scores and scores of people and this was a question that came up repeatedly and this was their conclusion in their report: Their task force preferred limiting membership to states that met minimal human rights standards, but concluded that such an approach would not likely find acceptance in the U.N.

So a group that has really looked at this question specifically, talking to people across the ideological spectrum, they came away very discouraged from the prospects.

Even if you had a minimal standard, like under U.N. Security sanction, some kind of sanction, you are still going to have rogue states slip into the new Human Rights Council anyway and I think still working their mischief.

Ms. WINDSOR. Can I just add one thing?

Mr. SMITH. Sure.

Ms. WINDSOR. I also think it is important to think about the politics of this. Everybody that was part of this working group related to the U.S. Institute of Peace and Reforming the U.N., and we debated this somewhat. And I think that what David Birnbaum, who actually led the ABA efforts said is that, yes, there wouldn't be agreement on this, but that doesn't mean we shouldn't try.

I think that if we exert our political influence and we encourage our fellow democracies to use their political influence, we can get something done.

To just simply say it can't be done makes us think that there is nothing, other than the status quo, that can be done. I think just starting the process of reform is going to be extremely important and it will change the way things are.

So I think that we shouldn't give up. It will be hard work, but I think we can absolutely get a better situation than we have today.

Mr. SMITH. Let me just ask: How do we prevent the Human Rights Council from following what then would be its predecessor, the Human Rights Commission, with the demonization of Israel, which is so disproportionate?

Every country which has a problem needs to have it vetted. It needs to be held to account, but Durbin was a hate fest, without any ifs, ands or buts about it, and having a very separate item for a very small country, the demonization of Israel, as we have seen so many times at these Commission meetings, is appalling.

China gets by unscathed. The torture that Mr. Fu suffered and which is endemic in the Chinese system. If you are arrested and you are a political prisoner, you are tortured, period. And they don't have torture victims relief centers, to the best of my knowledge, in Beijing or Shanghai or anywhere else. So people have to live with that trauma and quietly nurse the nightmares that have been imposed upon them.

Demonization of Israel. Would anyone like to touch on that? Ambassador Williamson?

Ambassador WILLIAMSON. Thank you, Mr. Chairman. Two observations, if I could. First, on the prior issue of what is practical or not, I am a pessimist about what is practical, given the makeup of the 191 members, et cetera.

But if we can't stand righteously for standards on human rights, where can we? I don't think it should be a question of us considering what is politically practical. The United States should stand and assert and push for proper standards for membership of the council, while recognizing that the inherent difficulties are still there.

I have great respect for former Ambassador Birnbaum and he consulted me when he was doing that ABA report. But I think that we should be forward leaning and trying to at least create a council that has a fighting chance to stand up for minimum standards.

With respect to Israel, frankly as long as countries see it as a free shot, a free shot to bash Israel, to carry favor with certain members of the Arab groups, certain members of the G-77, they will continue to do that.

Here again, the United States should show more leadership and talk to our friends, to at least say no, it is not a free shot.

It is not only counterproductive to support resolutions against Israel that are not balanced, that don't recognize legitimate security concerns, but it is harmful. It hurts the peace process.

It makes it more difficult to advance toward a day when you will have a Palestinian State next to the State of Israel, but the United States diplomatically has to start going to our friends, before we can go to others. And as long as countries see our friends using this as a free shot to carry favor, then the vast majority of countries will continue as well. Thank you.

Mr. SMITH. Mr. Payne?

Mr. PAYNE. Thank you very much. I really appreciate, Mr. Fu, your courage and your commitment to human rights and what you have gone through and let me say you are a true hero. It is a pleasure to meet you.

The thing that kind of baffles me though, as we talk about human rights and our policy, I think that the U.N. is a very difficult organization to govern, as we see, but I look at the most favored nation status, now normal trade relations with the People's Republic of China.

We have just an exploding trade deficit as we know. However, that policy is a policy that is very much supported by the Administration.

Now we have Cuba, of course, in our Hemisphere. I guess that is a Communist country also, where we have a policy of isolation.

My point is either you isolate them all or you try to. Some of the big traders, fair traders, say well if we trade and uplift the standard in China, then that might, you know, grow democracy and people will see that there is a better system than the Communist system by this free enterprise.

One of the things that baffles me is about having a policy that is consistent and it troubles me. If we look at Turkey, where they are very supportive of NATO, very supportive of the United States' positions and their treatment of the Kurds in Iraq under Saddam Hussein, we had a no fly zone where we protected the Kurds from Saddam Hussein.

However, in Turkey we allowed, or never strongly condemned the Turkish Government's behavior to the Kurds or their invasion of Cypress, where they still have occupied territory, which is not supposed to be held when you take territory in a war.

If we talk about the meeting in Chile, our strongest supporter right now in Iraq, one of our strongest supporters is Pakistan. I don't know if they are being invited to Chile, because they are not a democracy. However, according to, you know, Secretary Rumsfeld, Pakistan is tremendously cooperative and is helping us in the move to get Saddam Hussein. I mean Osama bin Laden. It is a name we don't hear much anymore.

Maybe I will just throw it out to you experts out there. How do we reconcile a policy? You know I even heard top Administration officials talk about the fact, and I quote them, if we could save one U.S. life by using they didn't torture, but it was torture, then this top Defense administrator said that we should use everything possible to save one of our lives.

I agree we should try to do everything to save one of our lives, but it was almost an endorsement of torture. So I get kind of confused about the difficulty that we are confronted with.

I just wondered if any of you would like to comment on that broad issue.

Ms. WINDSOR. I will comment. I agree with you that consistency is extremely important. It is very, very difficult to get that in the democracy and human rights field, having spent some time in the U.S. Government.

I think that the very least you would ask is that the people that are focused on democracy and human rights be in the decision-making forum to put their cases forward so that any Administration can consider what the democracy and human rights ramifications of a particular policy is. And that does not happen, unfortunately, very consistently.

I think that this Administration is to be congratulated for the many things it has done to try to promote democracy and human rights, but they have now raised the bar even further with the President's inaugural address and he said something very significant in that address.

He said that the success of our relations with other nations will depend on how they treat their own citizens. That is a very, very strong statement and that means trade relations, security relations, other kinds of relationships and unfortunately, or fortunately, they are going to be judged exactly on the situations like Pakistan, which are difficult situations to be sure.

Pakistan was not included in the Community of Democracies and the United States did not push for that. However, the United States and the convening group actually agreed that Russia should still be a full participant in the Community of Democracies process, despite the fact that we have seen such a dramatic deterioration in that country that it has now been downgraded to "Not Free" status by Freedom House.

I think what we are looking for is a higher level of attention by those within the Administration to make sure that their decisions make sense. Certainly I would say that there is no way that we can have any credibility criticizing others for practices like torture, if we are not absolutely above board that we are not engaging in such practices, do not intend to, and have put in place systematic reforms that will prevent it from happening again. And I don't think we have actually done that yet.

Mr. PAYNE. On trade, the first month of this year in 2005, with the People's Republic of China, there was an 1,800 percent increase in cotton shirts, because the quotas were taken off, 1,400 percent increase in the importation of trousers and the number goes on like that.

I am not stating a policy position, but we had a hearing the other week regarding China and Venezuela, and China is buying Venezuela's oil, making Venezuela more robust to buy weapons and so forth. I guess if you have oil you can sell it to anybody, but that was sort of the trend.

Where is China going to get the money to buy the oil? If you want to start, well you know if it wasn't for the robust trade that we have with the People's Republic of China, it would probably be in the same state they were in 25, 30 years ago. Is that good? No. I guess people have a better way of life and economics hopefully.

President Reagan said all tides lift all ships. So I guess everyone in China is doing a little bit better, but these are some very perplexing questions. My thing is, Are we going to coexist with China?

We had a joint hearing of the Armed Services and the International Relations Committees and it was almost like a meeting that we are at war already.

Well, if we are at war, let us stop the trade. Let us cut them off. Let us get them at the pass and let them go sell it to somebody else. Or if we are going to coexist and not talk about technology transfer and the weapons systems, it was like we were at war at the hearing, from the Armed Services people that followed more closely in keeping Europe from selling technology, and I guess it is a good thing, you know.

We don't want it in the hands of irresponsible people, but on one hand we are saying stop it over there and over there we are buying everything that is not nailed down.

Like I said, I am frustrated. I am not a diplomat. That is very clear. I mean I think anybody on this Committee would know that. That is for sure. Never will be. Never was. Never could be.

However, I appreciate your comments. I would be interested in the other panelists.

Mr. LOCONTE. Yes, very quickly, sir. Terrific points and I agree with them. I share your concerns. I genuinely share your concerns.

America is a deeply flawed democracy in so many ways. Balancing moral principle and prudential judgment and national and economic interests, it doesn't always come out the way I think many of us would like. I completely agree with you.

One little historical example and then something contemporary, maybe to help kind of frame it a little bit. During the formation of the Commission and the debate over the Universal Declaration of Human Rights, Eleanor Roosevelt was approached by one of the Soviet delegates to the Commission, who said, look, United States has all these problems with race. You have got incredible racial problems in your country. Why should we sign on to your Universal Declaration? Why should you be in the business of dictating to us what universal rights are?

Eleanor Roosevelt, I love her response. It was, fine. Bring a Soviet delegation in to the United States. Tour our prison system. Tour the country. As long as we can send an American delegation into Moscow. The Soviet delegate declined.

I think there is this idea, back to historian Paul Johnson, who says that the essence of geopolitics is the ability to distinguish between different degrees of evil.

I think there is something to that. I think there is something to that. I had a lunch conversation with a Catholic Bishop in Sudan and his Diocese extends into Darfur. He is convinced that the regime in Kartume, it is not afraid so much of the African Union right now. It is not really afraid of the European Union. It is afraid, though, of the United States and what it might do. That is his read of the situation on the ground.

I think that is interesting and important that despite the inconsistencies of the United States and the difficulties, there are some thuggish regimes out there that fear the moral and frankly the military power of the United States.

Ambassador WILLIAMSON. Congressman Payne, first it is nice to see you again. We served on the Enterprise Worldwide Board together and also on the Nigerian Election Observer Mission a number of years ago.

Consistency is difficult. I know that as a father. I know that from having served in three different Administrations.

I think it is important to understand there is a basket of interests for the United States and human rights is not the only interest, but the important thing is also that human rights can never be irrelevant.

It can never be irrelevant, because it is fundamental to what makes us Americans, the American ideal, American exceptionalism.

It could never be irrelevant because I agree with the President's statement that a freer world is a safer world and that a secure world requires a recognition of human rights and democracy.

I think your angst is well founded. I think the challenge for those who engage, whether in an NGO, as diplomats, but particularly the people's representatives in Congress, is to keep pushing that we be faithful to our values and our core, which is the human rights dimension, which I know the Members of this Committee have done.

Mr. SMITH. Mr. Royce?

Mr. ROYCE. Thank you, Mr. Chairman. I wanted to start with a question to Jennifer, which is: Suggestions regarding the

credentialing process that might be undertaken for NGOs and for the Economic and Social Council and the Human Rights Commission, how do we get this fixed so that it isn't just NGOs set up by a government that is automatically credentialed, but when legitimate NGOs attempt to get into the process, there is no first amendment right there for them? What are your suggestions?

Ms. WINDSOR. It is my understanding that there is a specific governing resolution that ECOSOC passed in 1996. It is resolution no. 31, which actually governs the NGO accreditation process, and as with many resolutions passed by the U.N. and other bodies, I suspect it needs a little review and I would think we are going to be urging the U.N. democracy caucus to be looking at that resolution and have democracies think about updating that to avoid the kind of problem you are talking about, the problem of government-controlled NGOs.

It has specifically been used by repressive regimes on that NGO Commission to try to knock off those NGOs that criticize them.

Several years ago Freedom House was under attack from a combination I think of Sudan, Russia, China and Cuba, which I figured was a compliment to our work, and you know we had to do a lot of parliamentary maneuver around what that resolution said and what it didn't, but it obviously needs to be clarified and I think it hasn't been looked at for a long time.

Mr. ROYCE. One of the things that I was thinking about, Mr. Loconte had the observation that if we move any of these decisions over to the General Assembly, the same dynamic basically is going to be put in play on a human rights body that exists today on the Commission.

It is just that instead of the regional actors being bad and cutting a deal to make certain that a Sudan can be on the council, that now those regional actors will team up with other bad actors to have the same effect throughout the National Assembly.

I don't know of any other way, short of changing the Charter, to get from point A to point B. If you take it to the General Assembly and you make this change by making this a subset of the General Assembly and having a two-thirds vote, as was suggested by Jennifer, and at the same time you address some of those other issues, such as any nation that denies a U.N. rapporteur, or any nation that is a subject of item nine concerns or resolutions out of the U.N., or any country under U.N. sanctions, if you made your reform, attaching that, to a two-thirds vote in the General Assembly, you might be able to get a body of countries represented on this human rights body that would be far more responsible.

I didn't think that it was possible to get China to stand down recently on the issue of Sudan and yet, China did not exercise that veto.

So clearly there is a certain amount of international pressure that when applied across the board becomes difficult for powers that would like to exercise manipulation behind the scenes or a veto to face down.

We were in Darfur about a month ago, in Darfur, Sudan and saw the results of the bombing there with Russian planes and the attacks on civilians with Chinese ammunition and I think the assumption was, well China and Russia are just going to pass any-

thing that comes up before the Security Council. And yet now we have the increase and the mandate to put additional African Union forces in and we have got the targeted sanctions on the Sudanese leadership, Kartume leadership, plus the potential of having some of them brought to the bar of justice.

Maybe we could just kick off a little discussion here, downside risk, upside potential, and I will start with Joseph. Go ahead.

Mr. LOCONTE. Thank you, sir. I floated the idea of perhaps there is a way to formalize and elevate the status of the Community of Democracies within the U.N. system in such a way that they would be the only nations allowed to determine the membership of the Human Rights Commission, but everyone tells me that is a non-starter.

So I come back to this paradigm shift. The Secretary-General of the U.N. has spoken eloquently about democracy, democracy promotion and making that a central objective of the United Nations and then also of course his commitment to human rights and I am trying to get more people to really connect the dots, to restrict the promotion of human rights and the defense of human rights to democracies, to states that have that kind of a track record.

I just don't see how the General Assembly, a General Assembly which for example voted to have Syria as a member of the U.N. Security Council a couple years ago, which is on the State Department list of state-sponsored terrorism. That is the kind of mischief we can expect from the General Assembly.

I am not hopeful. I don't think I am a pessimist. I think I am a realist on this. I am just not hopeful about the General Assembly's ability to weed out the rogue regimes and to prevent the kind of manipulation of the system that we have seen really over two decades or more.

Mr. ROYCE. What other countries do we see energized and helping us on this very issue? What other nation states have lined up behind the NGOs to look at solutions, either like Jennifer has suggested today or Joseph, your idea about a democracy-based caucus?

Ms. WINDSOR. I think that among the Community of Democracies, I would say that the Eastern Europeans in particular have been very, very strong. The Poles, the Czech Republic, they are both on the convening group of the Community of Democracies and have been very forward leaning.

The Chileans have actually done a very good job in kicking the U.N. democracy caucus into gear at all and I think that they can be counted on for support, up to a certain point and then of course there are regional blocks.

But again, I am not an expert on the arcane system of the United Nations, but from what I understand, one of the things that happens in the ECOSOC, the way that members are decided now in the U.N. Human Rights Commission is that regional blocks put forward their slates and other regional blocks cannot remove countries that have been put on the slate by regions.

If we can at least avoid that, even despite the fact, I am not saying it is a guarantee, but despite the fact that there is still too many "Not Free" countries in the U.N. General Assembly, that it would at least give some regional blocks the ability to veto others.

There is still going to be a lot of horse trading and the non-aligned movement is very well entrenched and part of what we are trying to say, in pushing for democracy caucuses, democracies need to be able to reach out across to each other to find that there is common cause across these regional boundaries.

How will that work? Well it will work by—for instance, I think this Administration has done a great job of reaching out to some of smaller democracies that don't get much attention from the United States. Having them to lunch. Talking with them.

This actually has made a huge difference in delivering some votes for some very key resolutions in Geneva. It doesn't take that much to have a lunch. I think there are real opportunities.

The toughest region—and I will say this as somebody that worked in Africa for a long time—is Africa. And the role that South Africa has played has not been helpful in that.

I really hope that countries like Benin and Mali, Senegal, Ghana can really assert themselves within the politics of the African Union, to try to think about how they can band together on the continent to push for themselves becoming candidates for membership and really lobbying as something that they really, really want and that is part of it, that usually it is the dictatorships that care the most about being on these committees.

The democracies and others have not been as interested, as these aren't really important committees, relative to some other parts of the United Nations, but at least if you could get some of the democracies to put themselves forward, you would at least have a political race and I think you would be able to have a potentially better outcome.

Mr. ROYCE. I saw representatives of a good number of African democracies among the African Union troops in Darfur, Sudan, outside of a town named Tinay, and they were taking considerable risk, because before they got there, there had been 30,000 people in that town and now there are 200. They are there as sort of a deterrent and as observers and a number of African States, seven or eight, had provided these volunteers and they all spoke with great enthusiasm for their role.

Is France at all supportive of these reforms? When I have talked to some in France about this, they have a different view of democracy than we do. Their view frankly is that democracy is for some cultures, for example France, but it is not for other countries.

They have an almost colonialist perspective, or some do. I am not charging that the head of state has that view, but some that I have talked to in France have that view that frankly the concept of democratic governance may never apply to Asia or may never apply to Africa and maybe shouldn't.

This seems to be a uniquely American view that the world should embrace these values, but I notice that when I am abroad, people that I talk to in every culture embrace those views. And I think that is why when you quoted Eleanor Roosevelt, that what people were responding to was the ideal that the United States was to represent to the world, in terms of this hope to move everybody toward responsible self-governance.

I wonder, Are our friends in old Europe embracing attempts right now to reform? Or is this Eastern Europe and the U.K. and the United States?

Ms. WINDSOR. Others can comment on this, too. France of course, they are against actually the setting of criteria. That is what they said when they came to the first Community of Democracies meeting to announce that they think that setting criteria is not right, they don't believe that. They actually argue that every country has its own approach to democracy.

That being said, you know even France can change and I thought it was interesting that, while the situation in Lebanon is not one necessarily yet of democratization, they found common cause with the United States, at least on ending occupation of the Syrians there.

I also would point out that there are a number of French civil society groups that are quite active. We are very active right now in Cuba and becoming more active in North Korea. And there are groups particularly on Cuba that have sprung up that were never there before, calling attention to human rights violations in Cuba.

I think that there will continue to be a debate about it. I would say their foreign policy apparatus generally is more insulated than ours from NGO kind of pressures, but I would say some of the Nordic countries are potential allies and have been more forthcoming.

The Germans have recently supported this creation of the democracy transition center in Budapest, Hungary. I think there are some ways that some of the old Europe is changing and I think that the dynamics within the European Union are going to change too, with a lot of these new entrants.

Mr. ROYCE. My hope would be that we could carry this to a higher plane, in terms of using Radio Free Asia and Radio Free Europe, Radio Liberty and broadcasting public diplomacy to sort of engage the media in other countries about the nature of these reforms, the desirability, and get the debate out.

French NGOs do a fantastic job in North Korea and elsewhere. If you got the debate to the French people, if you got the debate outside of the foreign policy apparatus in so many countries, you would find that men and women on the street are really desirous of a push for reform.

I commend the Chairman for that reason for this hearing, in order to try to examine how we might ourselves encourage.

Ms. WINDSOR. One of the things that we have talked about, we are working with the National Endowment for Democracy and the German Marshall Fund to try to come up with a transatlantic democracy network outside of governments to try to push governments to be more consistent about it.

One thing that I think we need to—within the civil society community here and frankly Members of Congress—think about writing editorials for European newspapers. We always think about writing editorials for the *Washington Post* and the *New York Times*, but I think that if we started systematically trying to place more editorials giving our perspectives on these kinds of issues into European newspapers, we might be able to tap that latent public opinion.

Mr. ROYCE. I will say that Kofi Annan is doing that task on behalf of the United Nations. He is very articulate in explaining these issues and I just hope we find a way through radio broadcast to carry some of his messages and arguments out around the world.

I thank you again, Mr. Chairman.

Ambassador WILLIAMSON. Congressman, if I could just make a couple observations and both of which you are better situated than anyone at the State Department.

You fish where fish are. There aren't that many votes in Europe. That is not your problem. Your problem is we don't have a strategy to go where the votes are, which is in Africa and Asia, Latin America. That is the first point.

Second, it is a recognition that three countries that have the same vote as you, their full population could fit in RFK Stadium.

The paradigm within the U.N. is not, with all due respect, the medium or major powers, whatever you want to call them, of Europe. It is trying to find effective ways to reach out and fish where the fish are.

I agree 100 percent with you that people everywhere want freedom and want human rights. So there is a message to reach out and America's is man's last best hope.

Second point, Congressman, in the House of Representatives where all of you represent the same number of people and have the same basic staff, you still have all kinds of subsets of like-minded people in various caucuses, et cetera. Now imagine you are in a situation where one member has a staff of 500 and you have a staff of 2. I guarantee one thing. You won't know what is going on 90 percent of the time. So you bond together with others who will take the lead on this or that and that is what we have in the U.N.

It is not the major countries that is the issue. We have philosophic geopolitical differences with some of them, but ultimately you are talking about 100 plus members of 191 that aren't driven by those things. They are driven about how do I figure out what those 200 votes are in the General Assembly?

What is going on in those 200 Security Council meetings every year? And it is me and two others, one of whom is a secretary and the other is a young aid, who somehow are supposed to follow it.

So what has happened is the groups that are formed and had cohesion are these regional groups and the challenge is to say, no, you have a better option. You can link up with countries that share your values.

That is what the United States and those who propose to change the paradigm have to do. But let us understand it is reasonable for them to do what they are doing. We just have a better opportunity and have to sell it, which means just like, with all due respect, in the Congress part of it is leadership providing a lot of nuts and bolts stuff, not high falluting policy.

So there is a comfort level that those things get serviced, as well as them to look beyond their habit of binding together for protection with their local neighborhood and those are a lot of a small and medium countries.

So it doesn't mean not trying to engage significant nations in Europe and elsewhere, but just like we discussed earlier, they have a basket of interests.

I want to emphasize I don't know if this is true or not, but I was just over in Europe for an OSCE meeting and there is a very interesting article about the German Chancellor and his position on China small arms sale, driven by what he wants them to do to support Germany in the Security Council.

You are going to have certain tradeoffs that we have to deal with. That you deal with everyday. But it can be done. It can be changed, but it takes leadership and the United States has to go beyond just its own neighborhood to do that.

Mr. ROYCE. I appreciate that explanation, but that is one of the reasons I brought up France and Germany. I was in Germany in December and we had some of the same discussions and the same type of behavior.

I would like to just endorse your concept. Let us try to move the democratic principles we are committed to and not the wheeling and dealing, but to the advancement of human rights around the world. Thank you very much.

Mr. SMITH. Thank you?

Mr. PAYNE. If you would yield a second.

Mr. SMITH. Sure.

Mr. PAYNE. Maybe good news, the new Pope is from Germany. So maybe we can work on him you know. I don't know. He must be a good politician to do it in 2 days. I can't believe it, you know, looking at the smoke.

I was watching on BBC this morning and it was in the afternoon and they saw the smoke come up and they couldn't tell, because it was gray. I said, boy now gray must mean obstension. It wasn't white and it wasn't black, it was gray. I said, it was gray. They finally cleared that up and it was really a weak black, but then lo and behold the decision.

I have to talk to Archbishop McCarrick and see what happened. That is right. They can't talk. Okay. We will never now, right?

Mr. SMITH. We have our sources.

Mr. PAYNE. That is right.

Mr. SMITH. Thank you and thank you, Mr. Royce. I want to thank our very distinguished panel for your insights.

Thank you Ambassador Williamson for your very incisive final commentary on what the challenge is and to all of you. This has been a very, very useful panel. It will help us and then obviously we are all in this together and we want the outcome to be the observance, the promotion, the respect for fundamental human rights.

Thank you so much. I look forward to working with all of you. The hearing is adjourned.

[Whereupon, at 5:30 p.m., the Subcommittee meeting was adjourned.]

BRIEFING: THE U.N. COMMISSION ON HUMAN RIGHTS: PROTECTOR OR ACCOMPLICE?

TUESDAY, APRIL 19, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL OPERATIONS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 3:27 p.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith, (Chairman of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee will come to order. We are very, very grateful to have Assistant Secretary-General Danilo Turk, a national of Slovenia, who has been Assistant Secretary-General for Political Affairs at the U.N. since February 2000.

Prior to assuming his current position at the United Nations, Assistant Secretary-General Turk served as Ambassador and permanent representative of the Republic of Slovenia to the United Nations. In addition, he was a member of the U.N. Commission on the Prevention of Discrimination and Protection of Minorities from 1984 to 1992, and later its Chairman. Assistant Secretary-General Turk's published work includes a book entitled *The Principle of Non-Intervention in International Relations and in International Law*.

Again, we are very grateful to have you here. I just want to point out, as my colleagues know, we had a hearing on the Congo and then turned that into a briefing as well. We heard from Jane Hall Lute who did a tremendous job and has kept this Committee and the Congress very much informed about the ongoing progress that is being made with regards to the Secretary-General Annan's zero tolerance policy with regards to peacekeepers and trafficking, and I think this kind of exchange and this kind of transparency is very, very effective and helpful to us to know what you are doing, so you will know where we are coming from.

So again, Assistant Secretary-General, thank you for taking the time to come here, and please proceed however you would like.

STATEMENT OF THE HONORABLE DANILO TURK, ASSISTANT SECRETARY-GENERAL, DEPARTMENT OF POLITICAL AF- FAIRS, UNITED NATIONS

Mr. TURK. Mr. Chairman, thank you very much, and I would like to start by saying how privileged I feel to have the opportunity to brief you on some of the current activities pursuant to the Sec-

retary-Generals' far-reaching proposals on the reform of the United Nations.

I would like to say right at the outset that I will be happy to answer your questions, but before that I would like to make a few brief remarks by way of introduction.

As you are aware, the Secretary-General submitted his report entitled *In Larger Freedom: Towards Development, Security and Human Rights for All* on March 21 of this year. I do not have to dwell on all the aspects of that report but I should emphasize its basic premise: The report contains a comprehensive set of proposals to strengthen and, where necessary, to change the U.N. structure in the fields of development, security and human rights. These three areas of work are approached as a matter of urgency, and human rights feature prominently in this context.

Another fundamental feature of the Secretary-General's proposals is that they should not come as a surprise. While they are innovative, most of them are not entirely new and many of them have matured in discussions held over a number of years.

The proposal for the creation of the Human Rights Council is one of them. Politically speaking, the major innovation here is the vision of three principal organs of the United Nations: The Security Council, the Economic and Social Council and the Human Rights Council. This vision, once carried out by the establishment of the Human Rights Council, would give human rights its rightful place in the U.N. structure. While the idea *per se* is not entirely new—it was discussed as you recall in the human rights community, notably at the time prior to the Vienna Conference on Human Rights in 1993—it has now found a very strong expression in the Secretary-General's package of reforms.

An important question which might be asked is, How should this Human Rights Council function? The Secretary-General has explained some of the basic ideas in his recent address to the Human Rights Commission in Geneva, and I think it is quite important that he started those remarks with a critique. He referred to the Commission on Human Rights, and he said:

". . . the Commission's ability to perform its tasks has been overtaken by new needs, and undermined by the politicization of its sessions and the selectivity of its work. We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough."

I should like to say that this is very strong language for the Secretary-General who serves all the member states of the United Nations.

Then from here on the Secretary-General continued with a specific proposal, which is very much focused on the implementation of human rights, and he said:

I have proposed that the Council be a standing body, able to meet when necessary rather than for only 6 weeks each year as at present. It should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfillment by all states of all their human rights obligations. This would give concrete expression to the principle that

human rights are universal and indivisible. Equal attention should be given to civil, political, economic, and social rights, as well as the right of development. And it should be equipped to give technical assistance to states, and policy advice to states and to U.N. bodies alike."

I think that his emphasis on technical assistance and policy advice both to states and U.N. bodies is an important one. This is something that is currently not happening, or is not happening enough.

Now, the question of how the Human Rights Council should be selected is the next fundamental question.

In essence, like its modus operandi, the selection of its members will ultimately depend on decisions of the U.N. member states. However, the Secretary-General proposed three procedural devices which should help:

First, the council will be elected by two-thirds majority in the General Assembly. This means, and I think that is very important, that candidates nominated by one of the five regional groups—even if supported fully by the regional group or having a complete slate of candidates—will have to gain two-thirds of the votes of the General Assembly. This is an important guarantee that the elected will have credibility in the area of implementation of human rights.

I should add here that we have seen how the two-thirds majority worked on occasion in the elections of the Security Council members where it was possible that a proposal from a region did not pass the test of two-thirds majority in the plenary of the General Assembly.

Second, the council should be smaller than the current commission, which is important because it would encourage better rotation among its members. One of the problems with the current commission, given its size of 53 members, is that many are there in a quasi-permanent status and rotation is not sufficiently dynamic.

And third, the council members should undertake to abide by the highest human rights standards. This would lead to scrutiny and peer review prior to elections and should allow for more specific criteria for membership in the council to emerge over time. While at present it would be difficult to agree for member states on sufficiently precise criteria, the scrutiny of pledges, I believe, would lead to their gradual establishment.

Obviously this approach does not preclude an abstract definition of criteria right from the outset. But the Secretary-General is aware that member states at this point in time are not yet prepared for a sufficiently-focused negotiations on this matter.

And finally, Mr. Chairman, let me emphasize that the success of this proposal will depend on the support of member states. As always in the United Nations, the Secretary-General may propose but its member states will decide, and a decision will depend on the breadth of that support.

I would like to say in conclusion that the forthcoming Ministerial Conference of the Community of Democracies, which will meet in Santiago, Chile next week, will be an early opportunity to galvanize the necessary support.

Now, these are the remarks, Mr. Chairman, I wanted to make from the outset. Obviously, I could not describe the whole picture.

I will be happy to take questions and try to answer them. And of course, if I am not able to answer all your questions in a satisfactory manner, I will be perfectly happy to continue this communication with the Subcommittee.

Thank you very much.

[The prepared statement of Mr. Turk follows:]

PREPARED STATEMENT OF THE HONORABLE DANILO TURK, ASSISTANT SECRETARY-GENERAL, DEPARTMENT OF POLITICAL AFFAIRS, UNITED NATIONS

Mr. Chairman,

Distinguished members of the Sub-Committee,

I feel privileged to have the opportunity to brief you on some of the current activities pursuant to the Secretary-General's far-reaching proposals on the reform of the United Nations.

As you are aware, the Secretary-General submitted his report entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" on 21 March 2005. I do not have to dwell on all the aspects of that report but should emphasize its basic premise: the report contains a comprehensive set of proposals to strengthen and—where necessary—to change the UN structure in the fields of development, security and human rights. All these three areas of work are approached as a matter of urgency and human rights feature prominently in this context.

Another fundamental feature of the Secretary-General's proposals is that they should not come as a surprise. While innovative, most of them are not entirely new and many have matured in discussions held over a number of years.

The proposal for the creation of the Human Rights Council is one of them. Politically speaking, the major innovation here is the vision of three principal organs of the United Nations: the Security Council, the Economic and Social Council and the Human Rights Council. This vision, once carried out by the establishment of the Human Rights Council, would give human rights its rightful place in the UN structure. While the idea *per se* is not entirely new—it was discussed in the human rights community, notably at the time prior to the Vienna Conference on Human Rights in 1993—it has now found a very strong expression in the Secretary-General's package of reforms.

How should the Human Rights Council function? The Secretary-General has explained some of the basic ideas in his recent address at the Commission on Human Rights in Geneva. He started with a critique of the current system, in particular, the Commission on Human Rights:

"... the Commission's ability to perform its tasks has been overtaken by new needs, and undermined by the politicization of its sessions and the selectivity of its work. We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough."

From here on the Secretary-General continued with his proposal:

"I have proposed that the Council be a standing body, able to meet when necessary rather than for only six weeks each year as at present. It should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfillment by all states of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as the right to development. And it should be equipped to give technical assistance to states, and policy advice to states and UN bodies alike."

How should the Human Rights Council be selected?

In essence, like his *modus operandi*, the selection of members will ultimately depend on decisions of the UN Member States. However, the Secretary-General proposed three procedural devices which should help:

First, the Council would be elected by two-thirds majority in the General Assembly. This means that candidates nominated by the five regional groups—even if supported fully by the regional group—will have to gain two-thirds of the votes in the General Assembly. This is an important guarantee that the elected will have credibility in the area of implementation of human rights.

Second, the Council should be smaller than the current Commission, which would encourage better rotation among its members.

And third, the Council members should undertake to abide by the highest human rights standards. This would lead to scrutiny and peer review prior to elections and should allow for more specific criteria for membership in the Council to emerge over

time. While at present it would be difficult to agree on sufficiently precise criteria, the scrutiny of the pledges would lead to their gradual establishment.

Obviously this approach does not preclude an abstract definition of criteria right from the outset. But the Secretary-General is aware that Member States are not yet prepared for sufficiently focused negotiations at this stage.

Finally, Mr. Chairman, let me emphasize that the success of this proposal will depend on the support of Member States. As always in the United Nations, the decision will depend on the breadth of support among States. The forthcoming Ministerial Conference of the Community of Democracies in Santiago, Chile, will be an early opportunity to galvanize the necessary support.

Thank you, Mr. Chairman.

Mr. SMITH. Secretary Turk, thank you so much for your briefing, and again for being here. If you would not mind answering a couple of questions.

One of the problems with the current system that I have observed personally, and I think we all have been frustrated by it, including the NGOs and everyone who has been involved in it, is regional block voting, and the whole idea of no action motions. China routinely has used that as a way of deferring any scrutiny or light being brought to bear on their egregious violations of human rights.

How does the new proposal deal with those two items, no action and regional block motion?

And on the issue of the annual report, again as I said to Dr. Lagon, those of us who follow human rights very closely find that a very, very useful tool every year, sometimes some of the other reports on human rights are updated as needed, there is an annual report and then an as-needed component to it.

But is that something that will be included in the proposal, do you think? And who would compose that? Do you anticipate that there would be more field missions, that the call will go out for additional funding so that more eyes and ears, and hopefully voices, are deployed throughout the world, particularly troubled areas?

Mr. TURK. Thank you for the questions.

Now, let me briefly refer to the three issues; first on the regional block voting. Obviously this is not something that can be easily eliminated from the practice of intergovernmental bodies. Those bodies are by definition at least to some extent political, and therefore the regional friendship, regional alliances play a role in that domain.

But I think that the way to reduce the importance of regional block voting goes through the election process, and the peer review which would not start after election, but really in the process leading to elections.

It is much easier to establish such a peer review if there is a two-thirds majority requirement because that means that automaticity in block elections from regions is not there, and therefore once there is no automaticity for election a healthy debate can start, and I think directly that would have an impact.

On the no action motion, I must say the procedural device of no action motion has been used, unfortunately, by member states from a variety of groups. This is not a monopoly of a particular group and has been used, if one looks in the whole history, by the entire range of groups. And that, I think, would require a different culture which is not going to emerge quickly.

But here I think the permanence of action of a Human Rights Council would be important because permanence of action would place greater emphasis on debate and greater opportunity to revisit issues on a continuous basis rather than to place the entire hope on a single vote for a resolution.

Right now we have a session of the Commission on Human Rights in Geneva every year where much of the energy is focused on the vote, and there is a saying in the United Nations that nothing is less important than a resolution which has been adopted by the vote the day before.

So I mean, this overemphasis of voted resolutions may be reduced if there is a continuous scrutiny and continuous opportunity to raise issues, even revisit issues which have been there in the past. Therefore, I think that the importance of resolutions and the consequent no action motions will be reduced over time.

And an annual report, I personally remember the discussions which we had in 1993, when the Office of the High Commissioner was negotiated. And I would like to say in passing that that office of negotiations was created in a rather weakened form. I mean, the original idea was to have a High Commissioner with stronger powers and better resources, but negotiations yielded it a rather limited result.

Now, in that negotiation it was already envisaged that the Office of the High Commissioner should better use the wealth of information which already exists, which is perfectly legitimate and accepted by member states. I mean, all these reports that exist, reports of treaty bodies, special rapporteurs and others are there to be used.

One way in which it is not used currently is a systematic analytical report which I think would create much better understanding of human rights situations and the issues to be dealt with, policies which need to be used to address the most difficult issues. If there is a systematic global report, which I think in a council might be more possible than previous bodies, because, again, the advantage of a continuous debate provides a better framework for such an output.

Mr. SMITH. I just wanted to note that I was very impressed with Secretary Annan's comments, and one of his phrases that ". . . the world must move from an era of legislation to implementation." I think many of us have been concerned that we make very good statements, but where is the follow up? So I want to say how grateful this Committee is that he has made that statement, and many of the others that are contained in his recommendations.

The responsibility to protect in his priority areas: What can be done with regard to issues like genocide, ethnic cleansing and crimes against humanity?

I mean, we choke on the word "genocide" for the longest period of time, unwilling perhaps all of us to say the word when the killing fields were going on in Rwanda, and then even in Sudan and in Darfur.

Hopefully, a direct result of this streamlining and this reform will be the willingness to call a genocide a genocide, and you might want to comment on that.

And I do have some other questions, but then I will yield to my friend, Mr. Payne.

Mr. TURK. Thank you, Mr. Chairman.

Now, on the responsibility to protect, I would like to mention that the Secretary-General's report, *In Larger Freedom*, contains specific recommendations on how that concept should be used and how it should be woven into the practice of various U.N. bodies, including in particular the Security Council, which has special responsibilities.

But the Human Rights Council can be an extremely important forum in this context as well because it will be much more adequate for early discussions on issues before they come to a point at which the question of effects of particular type of human rights violations on international peace and security could be raised.

I should have no difficulty in explaining here that the Secretary-General has been concerned over the issue of Darfur for a very long time, and he has used many of his informal contacts with the Security Council members much before it was possible to raise this issue formally with the Security Council, trying to build an understanding, trying to motivate the council members for an early action.

But in the Security Council, which is a purely political body with responsibilities in the field of peace and security, things are by definition slow. So to have a permanent process which allows discussion early on, that I think would help a great deal and would also provide an input which may start in the Human Rights Council, but of course, if issues are sufficiently serious can be then transferred to the Security Council.

As far as the questions of ethnic cleansing and genocide more specifically, our concern there is, I think, deficit in the implementation of one of the conventions which has been very widely ratified; namely, the Convention of Prevention and Punishment of the Crime of Genocide.

I should like to recall that that convention contains a clause which allows for any member state to bring to the attention of the appropriate body of the United Nations a genocide.

Perhaps on a slightly more personal note, I should say that when I was Ambassador of Slovenia in early 1990s, I participated in a group of states who were contemplating raising the operation in Iraq as a case of genocide before the International Court of Justice, which was perfectly possible under the legal regime of the Convention on Prevention and Punishment of the Crime—of Suppression and Punishment of the Crime of Genocide.

Unfortunately, the political will did not exist then and it does not exist now, and I think that here we have to mobilize the moral force for more effective use of instruments we already have. We should not believe that we are totally without instruments, and that is the point I would like to make today on this particular issue. Thank you.

Mr. PAYNE. Thank you very much. I appreciate your coming to this hearing.

Just getting back to the proposed reforms of the Human Rights Commission, in your opinion, how do you think the prospects for this happening are? And do you believe that there could somehow

be a criteria for—I do not know how you would do it, but limit countries or have some governance, you know, barometer so that countries with decent human rights records would be those eligible?

I do not know, it sounds naively optimistic, but is there some thought to attempting to do that, or do you think it is something that is feasible?

Mr. TURK. Thank you. First, on the prospect of this happening, we shall have an early test next week. I would like to once again mention the forthcoming Ministerial Conference of Community of Democracies, which will have an opportunity to discuss this particular issue of creation of the Human Rights Council as one of specific ideas around which the Community of Democracies in the United Nations could actually be formed.

At present, we do not know yet whether that is realistically possible, and whether it is going to happen. Democracies are not only democratic, they also have national interests and often these national interests diverge. The test to see how strong convergence is and what is the areas of divergence will be next week.

Now, the Secretary-General obviously is aware that he has proposed something ambitious, and this is the time for him to be ambitious. He has to propose a vision. He cannot limit himself only to the kind of proposals which he knows in advance will be passed without difficulty, so he has to come with difficult proposals because the organization has to face difficult problems.

Now, I believe that in that spirit the Secretary-General offered two options. He offered the option of the revision of the Charter which obviously becomes an easier subject if the revision of the Charter becomes necessary for the enlargement of the Security Council. Then obviously the Charter, the revision is on the agenda, and it is easier to deal with the Human Rights Council in that context.

If, however, that does not happen, then the Charter revision might be a more difficult avenue, and for that situation he proposed establishment of the council based on the General Assembly resolution. That would not make it a principal organ of the United Nations, but would still make it a different body which would retain the main features; namely, election by the General Assembly by two-thirds majority, continuous permanent action, and everything else that I tried to sketch as the features of the council.

Finally, as far as the criteria are concerned, I would like to tell you that in our contacts with delegations in New York at present, there is a very strong opposition to the idea of starting to formulate specifically abstract criteria for selection of council members, and that opposition does not come only from the countries where one would expect that to come, but also from the countries which are proven supporters, champions of human rights. They are not sure whether an attempt of this kind would be politically productive at this point.

So a more indirect approach like the one that I tried to outline based on the Secretary-General's proposal seems to be more realistic at this moment.

But as I said before, I think that the criteria will emerge as a result of practice should that body be established, and again, the

model which one has to look to is not so much which is elected differently, but the Security Council where the threshold is higher, and I think that for the Human Rights Council a higher threshold is what is needed.

Mr. PAYNE. Thank you. With the passing of the old OAU and the new Africa Union, the NAPAD concept seems on paper to be a positive thing. However, we are finding that within the Africa Union there is difficulty in moving forward proposals seemingly on Darfur. Originally we had opposition from Security Council member, I think Angola was voting against, and Russia and Algeria and China even on the abstention to the International Criminal Court. Brazil voted abstention with China, and the United States, of course.

But do you find that other kinds of politics, Algeria being opposed perhaps because it is a Islamic country, China because it is pumping oil in Sudan, Russia maybe not wanting embargo on oil because of past problems in Chetzenia, and if it a move in the U.N. to punish bad behavior by countries on oil embargo, then that—although I think Chetzenia really did a big disservice for their cause in the atrocities at the school, and at the theater. But do you find these other relationships come into play more so or less than we have seen, for example, in this Sudan situation, in your opinion?

Mr. TURK. Well, this question raises a complex set of issues, but let me say what I think is critical from a tactical point of view, and which I think is something that the U.N. is not doing enough, and that is, I think empowerment of the African Union. African Union is a great new hope, and a great new promise on the African continent. Of course, one has to appreciate the problem of shortage of resources and the need to supplement the goodwill, strong will that exists within the African Union with the necessary resources in a timely fashion.

I think this is probably the most important test which the U.N. was not able to fulfill adequately in the case of Sudan because one understands that the agreement on issues such as sanctions is always difficult. But I mean, at the same time there was a proposal to help the African Union forces to come to the necessary strength and to get the necessary equipment so that logically they would be able to patrol the areas, and that has not happened.

I mean, there were serious problems of planning in the African Union, but there were also problems of assistance in those countries where such assistance could be provided on a more efficient—in a more efficient way.

So I think one of the lessons, one of the fundamental lessons is to help African Union quickly. Give African Union resources and assets necessary so that it can play a role and it can demonstrate and make a difference in a practical sense. This, I think, is one of the main lessons which has not been sufficiently emphasized in the open discussions that we had. The story is obviously not yet over because of deployment of peacekeepers in the Sudan is continuing. Things could be remedied.

But there is a lesson to learn for future situations. Help assist African Union with assets and resources at the earliest possible occasion, and make sure that the ownership of the solution of the problem is as much as possible in the hands of African Union.

Mr. PAYNE. Thank you very much. I could not agree more, and a letter was sent to President Obasanjo just several days ago signed by close to 100 members, 75 Members of Congress, suggesting that the AU's mandate be altered to protect civilians, not even asking for chapter 7 type robust, which I think should be there. However, we thought we would do one step at a time rather than simply to assist the monitors, that there be a—that the mandate be changed to protect civilians, and we think that that would be extremely important.

Also, as I agreed, there ought to be more support logically and financially for the AU. On two occasions in the last 6 or 7 months, I have traveled to Addis to meet with Chairman Kanari and attempted to end—the whole team, and I have to admit the Vice Chairman from Rwanda, all very outstanding individuals in diplomacy and so forth, but I could not agree more that there has to be more support, and I think this fledgling newly-created organization could possibly come up with some of the solutions, African solutions, African problems with support for the U.N. and the EU and U.S. and the rest of the G-8 countries.

I think that most of the questions that I had you covered in your remarks, so I will yield back the balance of my time.

Mr. SMITH. Thank you very much.

Let me just conclude, Secretary Turk, with a couple of final questions.

Ambassador Williamson, who led our delegation, the United States delegation to Geneva last year, and I watched him, he did a tremendous job in trying to get resolutions, especially on Darfur, and was incensed of the lack of cooperation among many of the member states, and also by—and he says this in his testimony—that some of our European friends think that we are just trying to name and shame, and that it might be psychologically satisfying, but they do not bring human rights improvements.

He goes on to say how he disagrees, and points to lessons from many of the Eastern European countries, and those who suffered during the Cold War.

I wonder if you might want to give some comment on that. You know, I remember when Lin Xianzhi, the democracy activist, sat right where you are sitting at a hearing after being expelled from China, after spending a large number of years in that country's Laogai, and had suffered tremendous tortures just like Harry Wu, who is in our audience today. He made the point that when you are silent or less than robust in your articulating human rights concerns in our country, they beat us more; that torture, and the torturers are enabled by a silence.

I would note also that in Mr. Laconte's testimony today he points out that 2 years ago a newspaper headline in Kartun, Sudan declared that the regimes' "human rights file was closed forever because the special monitoring had ceased."

Perhaps you could speak to the issue. First of all, I think it is important that if not at the U.N. Human Rights Council or Commission, and I hope the council will be much more clear on speaking truth to power, particularly dictatorship power. I think we underestimate how important it is sometimes that there be a very

meaningful statement made by assembled countries or in the case of the council.

I would be interested in your take on that, because again, Ambassador Williamson was beside himself. I saw it. I felt the same way. We are arguing over language. Some of our European friends wanted a weaker set of findings and language that did not convey the horror that we felt with regards to Darfur, which I know you feel personally, and certainly Secretary-General Kofi Annan feels it as well.

But is there really an understanding that when a statement is made, when a country is held to task or taken to task, that it does help those who are being tortured, those who are being held, and their families, and the very people we want to see empowered? You know, the people who will be the Vaclav Havels of the future.

Mr. TURK. Well, let me first refer to the specific situation in Darfur and the fact that several weeks ago the Security Council actually was able to make a major breakthrough by adopting several resolutions, including one which establishes the jurisdiction of the International Criminal Court.

We understand—"we" meaning the United Nations officials—understand that a battle for establishment of a jurisdiction and for an effective course of justice is not won by a single resolution. We know that, for example, from the times of the International Criminal Tribunal for former Yugoslavia when the tribunal was established as an ad hoc tribunal. Many people believed that it will never be effective. It will never bring major suspects to the court for trial.

But now we see that this court not only brought major figures for trial but also transformed the political landscape in the Balkans.

So that is an important lesson that should not be forgotten in the case of Darfur, and therefore the decision of the Security Council has to be supplemented by pronouncements of other relevant bodies of the United Nations that give meaning and create a constant pressure for effectiveness of that decision by the Security Council.

In other words, the opposition which exists in the Sudan to transfer the suspects will only grow if that pressure is lessened. So I think that all bodies of this Human Rights Commission in the first place should be vocal and should not lessen the pressure. That is, I think, a lesson which was learned 10 years ago and which is no different today.

Mr. Chairman, you asked a larger question also, the question which, of course, is large and old; namely, it is true that silence always breeds oppression, and that there has to be speaking out.

What I would like to say is more an experience of somebody who is coming from East Europe who has been a human rights activist as a young man and who has come to the Commission on Human Rights for the first time in the winter of 1975. I will never forget that in that winter the Commission was able to agree on a procedure which eventually established the rapporteur for Chile.

Now, next week I will be traveling to Santiago in Chile for the Conference of Community of Democracies, and the main issue, one of the main issues will be how that community led by countries like Chile will strengthen human rights globally.

I think that much progress has been made, and we should not overlook that fact. East Europe is a very different place now than it was 30 years ago. Latin America is a very different place than it was 30 years ago. Some progress has been made, but of course reverses are always possible, and therefore pressure has to be kept, and such fundamental principles as not accepting silence are fundamental, and they will remain powerful. And that is, I think, one of the inspirations why the Secretary-General is making all these proposals. This is as much as I can say, Mr. Chairman, on this subject.

Mr. SMITH. Thank you. I just would conclude. Ambassador Williamson makes a point in his testimony in pointing this out, and I have seen it myself for years. One question that we all would have is that this new council—and I do hope it is constituted and realizes the dream and the hope that we have for it—does not become a mini of the macro that we have had with the U.N. Human Rights Commission; just a different place and a similar focus.

I always found it to be bizarre how much time was spent on Israel, which like the United States, and like every other country, has problems. None of us are perfect. But for Israel to get its own section, I would hate to see a human rights report globally being disproportionate, focusing on Israel, when places like China with its egregious violations gets less scrutiny and focus. That is more of just a comment, but I would hope that that would not be the case.

Johannesburg, I think, was appalling. The intolerance that was shown toward the nation of Israel. Again, which like every other country, does have problems.

I also would hope, and I say this with complete sincerity, if you could take back the concerns that I, and I think many other Members of Congress—not all certainly—have with regards to the life issue of the unborn child. To me that is a fundamental human right that everyone be included. Human rights are nothing if they are not all about inclusion, not exclusion, and certainly kids before birth have needs of protection.

So I do thank you so much, Mr. Secretary, for—let me go to my friend, Mr. Payne.

Mr. PAYNE. Right. I just too want to express my appreciation for the work that diplomats like yourself provide for the world. I shudder to think of a world without the United Nations in spite of all of its supposed problems. I think of a—it is almost like a city without a police department, you know. A lot of times police departments in our country fail or you get bad policemen. However, just think if there were none.

So I have been one to really be supportive. When I read about the old League of Nations, lack of participation probably was one of the reasons why it failed. Poor President Wilson proposed it, but was never ratified by this country, and I would hope that we can continue to appreciate the tremendous achievements by the health organizations and the nations—smallpox, almost getting polio out of the way. I mean, we can go on and on.

So I think that all of us agree that the strength certainly strongly outweighs the problems. However, we certainly have to, as in our country, we say in our Constitution we are moving toward a

more perfect union, and we are still moving in that direction. We are not there yet, but that is what the U.N. hopefully will move towards, a more perfect U.N. Of course, I hope it will not take as long as it has taken us, but we support, and I appreciate the Chairman calling this very important meeting today, hearing today.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Payne.

If I could, Mr. Turk, just ask one final question. Perhaps either for the record or you could come back with an answer—

Mr. TURK. Sure.

Mr. SMITH [continuing]. Or now. But would you ask the Secretary-General if he would, because I think it is important, it is one thing to have country-specific resolutions, and I think they are extremely important, holding countries specifically to task or taking them to task for human rights abuses, and that may include the U.S. I think we—you know, we have our problems and we need to rectify them. But section or agenda item nine, when you have a whole, a wholly-inclusive section dedicated to Israel seems out of proportion, and I think wrong.

I think again, not to continue, I think his testimony is outstanding, but as Ambassador Williamson says, "The excessive invective rhetoric assaulting Israel is numbing," and I saw it personally myself at the United Nations Commission in Geneva. We do not want that now transferred to any new council because, you know, it is a small country. I think Israel getting so much disproportion attention is bizarre.

Mr. TURK. Yes. Mr. Chairman, just let me say I think that a new council will be an opportunity to establish a new comprehensive and balanced agenda which, unfortunately, eluded the Commission on Human Rights for many years. I myself, I was chairing a working group of the Third Committee, which has been dealing with human rights in the General Assembly for 3 or 4 years, and unfortunately we could not move things in that context.

So a fresh start is an opportunity, would be an opportunity for a comprehensive yet balanced approach, which I think is needed.

Mr. SMITH. Thank you again so much, and we look forward to working with you going forward.

Mr. TURK. Thank you.

[Whereupon, at 4:07 p.m., the Subcommittee was adjourned.]

